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NO.

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

WALTER L. JONES, PRO SE,

V.

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

WALTER L. JONES, Pro se
for himself
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Buffalo, New York 14215
(716) 894-4508

QUESTIONS PRESENTED

1. Whether the individual Petitioner, Pro se, as an aggrieved person under Title VI of the Civil Rights Act of 1964, and as a beneficiary of the ACTS, has constitutional standings, and a statutory right to bring individual suit jointly with that of his solely owned Corporation, and to merge claims.

2. Whether the sua sponte - dismissal of claims, denial of hearing, and the presence of fraud constitutes a denial of substantial due process, and equal protection under federal law, voiding and nullifying all decisions premised thereon, in this case.

3. Whether the sanctions, below, dismissing this case, under Rule 37, 28 USC constitutes an abuse of discretion, and was arbitrary, under the circumstances of this case.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

OPINIONS BELOW

The opinions of the Court of Appeals (App. A, infra 1a-15a) is reported at 836 F 2d 731. The opinion and judgement of the district court (App. B, infra 16a-22a) is not reported. The original, relevant, interlocutory opinions and judgement of district court. App. D, infra 24a-79a) are not reported.

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JURISDICTION

The opinion of the Court of Appeals (App. A, infra 1a-15a) was entered on December 31, 1981. A Petition for rehearing was denied on January 29, 1988 (App. C, infra 23a). On April 26, 1988 the Associate Justice of this court extended the time within which to file a Petition for a Writ of Certiorari to May 27, 1988, the jurisdiction of this court is invoked under 28 USC, §1254, (1), Cannon v. University of Chicago, 441 US 677 (1979).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment of the United States Constitution provides, in relevant part:

> "No person shall *** be deprived of life, liberty, or property, without due process of law"...***.

2. The Fourteenth Amendment of the United States Constitution provides in relevant part:

> "No state shall make or eforce any law which shall *** abridge the privileges or immunities of citizens of the United States ***, or shall any state *** deprive any person of life liberty, or property, without due process of law ***; nor deny to any person within its jurisdiction, the equal protection of the law,"...***.

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3. Section 601 of Title VI under the Civil Rights Act of 1964, Pub. L. No. 88 - 352, 78 Stat. 252, at 42 USC, 2000d.1, provides in relevant part:

> (a) "No person in the United States shall *** on grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination, under any program, or activity receiving federal fiancial assistance."
>
> (b) "Each federal department and agency which is empowered to extend federal financial assistance to any program or activity, by way of grants, loans, or contracts, is authorized and directed to effectuate the provisions of Section 601, under Title VI, with respect to such programs or activities by issuing rules, regulations, or orders of general applicability, which shall be consistent with achievment of the statute."

4. Section 603 of Title VI under Civil Rights Act of 1964, Section 2000d, et seq. Pub. L. No. 95-599, in relevant parts, provides:

> "Any person aggrieved, may obtain judicial review. in accordance with Section 10 of the Administrative Procedure Act, under 60 Stat. 243."

5. Section 12(f) of the Urban Mass Transportation Act of 1964, as amended by Section 314, as amended by Section 1615, Pub. L. No. 95-599, codified at 49 USC, 1615, 42 USC 2000d, provides:

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"No person in the United States, on the grounds of race, color, creed, national origin, sex, or age, shall be excluded from participation in, denied the benefits of, or be subjected to discrimination under any project, program, or activity funded, in whole or in part, through financial assistance, under this Act. The provisions of this Section shall apply to employment, and business opportunities, and shall be considered to be in addition to, and not in lieu of the provisions of Title VI of the Civil Rights Act of 1964."

6. Section 1981 of 42 USC, provides in relevant part:

"All persons, within the jurisdiction of the United States shall have the same rights, in every state and territory, to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of their person, and property, as is enjoyed by White citizens."

7. Section 1654 of Title 28 USC, provides:

"In all Courts of the United States, the parties may plead and conduct their own cases personally, or by counsel, as by rules of such Court, respectfully are permitted to manage and conduct cases therein."

8. Section 1983 of 42 USC originating from the Civil Rights Act of 1866, and 1871 provides, in relevant parts:

"Every person who, under color of any statutory ordinance, regulation, custom or usage, of any state or territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States,

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or other persons within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitutional and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding, for redress."

9. Section 1985 (3) of 42 USC provides, in relevant part:

(a) "If two or more persons in any state or territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly, or indirectly, any person or class of persons, of the equal protection of the law, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any state or territory, from giving or securing to all persons within such state or territory, the equal protection of the law;

(b) In any case of conspiracy set forth in this section, if one or more persons engaged therein, do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person, or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured, or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one, ot more of the conspirators."

10. Section 1986 of 42 USC provides, in relevant part:

"Every person, who, having knowledge that any of the wrongs conspired to be done, and mentioned in Section 1985 of this Title, are about to be committed, and having power

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to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representative, for all damages caused by such wrongful act, which such person, by reasonable diligence could have been prevented; and such damages may be recovered in an action on the case' and any number of persons guilty of such wrongful neglect or refusal, may be joined as Defendants in the action."

11. Section 1331 of Title 28 USC provides:

"The district court shall have original jurisdiction of all civil actions, arising under the Constitution, laws or treaties of the United States."

12. Section 1343 of Title 28 USC, provides:

(a) The district court shall have original jurisdiction of any civil action, authorized by law to be comenced by any person;

1. To recover damages for any injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in Section 1985 of Title 42;

2. To recover damages from any person who fails to prevent, or aid in preventing any wrongs mentioned in Section 1985 of Title 42, which he had knowledge were about to occur, and power to prevent;

3. To redress the deprivation, under color of any state law, statute ordinance, regulations, custom or usage, of any right, privilege or immunity secured by the Constituion of the United States or by any act of Congress providing for equal rights of citizens or

all persons, within the jurisdiction of the United States.;

4. To recover damages or to secure equitable or other relief under any act of Congress providing for the protection of civil rights, including the right to vote."

13. Section 1988 of 42 USC provides in relevant part:

"In any action of proceeding to enforce a provision of Sections 1981, 1982, 1983, 1985, 1986 of this title, Title IX of Public Law 92-318, or Title VI of the Civil Rights Act of 1964, the court, inits discretion, may allow the [prevailing party],other than the United States, a reasonable attorney's fe, as part of the costs."

STATEMENT

1. Due to the glaring social and economical plights of Blacks, and other minorities, within the United States, Congress enacted the Civil Rights Act of 1964, in order to provide political, economical, and social equality for Negroes (Blacks), and other minorities within the United States of America, (the "Civil Rights Act of 1964"), Pub. L. No. 88, 352, 78 Stat. 252, codified at 42 USC, 2000d, et seq, (hereinafter, the "ACT").

2. Congress further created the URBAN MASS TRANSPORTATION ADMINISTRATION (UMTA) ACT of 1964, in order to provide employment and business opportunities, for Negroes (Blacks), and other minorities, within the United States of America, on projects funded by the DEPARTMENT OF TRANSPORTATION, (DOT), through UMTA.: (the Urban Mass Transportation Act of 1964) - Section 12(1), as amended 49 USC, 1608 (f), as amended by Section 314, as amended by Section 19, as amended 49 USC 1615, Pub. L. No. 95-599, codified at 42 USC, 2000d, et seq.

The ACTS authorized the administrators of the departments to make financial Grants to state and local agencies, in order to establish mass transportation systems. Pursuant to these provisions, UMTA distributed approximately Four Hundred and Fifty Million Dollars ($450,000.000.) in federal funds to the Niagara Frontier Transportation Authority (NFTA) a local transportation agency, between 1978 - 1987, for the construction and equiping of a subway system witin the City of Buffalo, New York

Section 602 of the ACT prohibits any Recipient of UMTA funds from discriminating on the basis of "race, color, or national origin"; (42 USC 2000d). At all times relevant to this litigation, Section 602 of the ACT provided that any federal department or agency, which is empowered to extend federal financial assistance to any program or activity, by way of grants, loans, or contract .... is authorized and directed to effectuate the provisions of Section 601, with respect to such program or activity, by issuing rules , regulations, or orders of general applic-

ability, which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance, in connection with which the action is taken.

Section 603 of the ACT provided that any department or agency action taken, pursuant to Section 602, "shall be subject to judicial review", as may otherwise be provided by law, for similiar action taken by such department, or agency, on other grounds. (42 USC 2000d).

On December 30, 1977, UMTA issued Circular 1165.1, as the rules and regulations for UMTA's interim Minority Business Enterprise (MBE) Policy, and requirements for Grant Recipients. The effective date of the Circular was March 1, 1978. The scope of the Circular was applied to discretionary grants,....

The Circular made reference to

a.) Title VI of the Civil Rights Act of 1964, 42 USC, 2000d, et seq.;

b.) Section 12(f) of the Urban Mass Transportation Act of 1964, as amended 49, USC, 1608(f);

c.) Regulations of the Department of Transportation, 49 C.F.R., Part 21;

d.) Regulations of the Department of Justice, 28 C.F.R., Part 42;

e.) Executive Order 11625, dated 10/31/71;

f.) DOT Order 4000.7, entitled Minority Business Enterprise Program. dated 3/26/75;

g.) DOT Order 1000.12 entitled Implementation of the Department of Transportation Title VI Program, dated 1/19/77; and

h.) Federal Management Circular 74-7, Uniform Administrative Requirement for Grant-In-Aid, to State and Local Government, dated 9/13/74.

UMTA Policy in the Circular required that MBEs "shall have the maximum opportunity to participate in the performance of contracts financed in whole, or in part, by UMTA funds". the Circular further required and obligated the Recipient to make "its best efforts", to assure that MBEs have an equitable opportunity to compete in contracting activities, and where the Grant exceeds ($1,000,000.) to establish an affirmative action program for MBE participation....

The Circular defined the term "Minority Business Enterprise", to mean a business enterprise that is owned and controlled by one or more socially or economically disadvantaged persons. Such persons would include, but not be

limited to Blacks....

UMTA Circular further required the Recipient to submit a MBE Program, as to the method of assistance that would be implemented to effectuate MBE participation on the Project, funded by UMTA. The Circular further provided that in "performance of the contract, the public body will provide for full and fair utilization of Minority Business Enterprises, and will use its best efforts to ensure that Minority Business Enterprises shall have an equitable opportunity to compete for contracts and sub-contract woork, under this contract". The Circular provided that the Agreement of Assistance, between UMTA and a Grant Recipient will contractually bind such Grant/Contract Recipient to the committments made in its MBE Program.

In 1980, the individual Petitioner (hereinafter, Petitioner Jones), a Black, filed suit Pro se, in the United States Court for the Western District of New York, alleging that he and his solely-owned construction firm (a corporation) had been discriminated against,

denied manditory assistance, and intentionally excluded from participating on the Buffalo Subway Construction Project, funded by UMTA. Named originally, as defendants, were the Niagara Frontier Transportation Authority (NFTA), Urban Mass Transportation Administration (UMTA), and the New York State Department of Transportation (NYS DOT). (App. E infra 80a).

Petitioner Jones, Pro se, alleged that NFTA, UMTA, and NYS DOT had rejected and ignored three (3) competitive low bids, totalling $47,870,186.36 submitted by Petitioner Jones, and his [non-union] MBE firm, a corporation, and that said Recipients had awarded the contracts to White owned [unionized] contracting firms, without affording Petitioner Jones, and his minority firm, requested and manditory assistance, in acquiring their low bid contracts.

On December 29, 1980, Petitioner Jones, Pro se, filed an amended complaint. (App. E infra 80a) The state defendant moved to dismiss the complaint on January 27, 1981. (App. E, infra 81a) Petitioner Jones moved to amend

the complaint on January 26, 1981, and January 27, 1981. (App. E. infra 81a). On February 5, 1981, UMTA moved to dismiss Petitioner Jones' amended complaint, filed on December 29, 1981. (App. E, infra 81a). On February 9, 1981, district court Judge John T. Elfvin granted Petitioner Jones, Pro se, leave to amend complaint. (App. E infra 81a). On February 20, 1981, Petitioner Jones, Pro se, filed the amended complaint, and a motion for preliminary injunction. (App. E infra 81a). The amended complaint added additional non-government defendants. The non-government defendants filed opposition papers, from February 26, 1981 to March 3, 1981, opposing Petitioner Jones' motion for preliminary injunction. (App. E infra 82a).

On March 2, 1981, Judge Elfvin heard Petitioner Jones' Pro se motion for preliminary injunction, and reserved decision. (App. E infra 82a) On March 9, 1981, the state defendant moved to dismiss the amended complaint filed on February 20, 1981. (App. E. infra 82a).

On March 17, 1981, Petitioner Jones, Pro

se moved to supplement and amend the complaint, returnable March 30, 1981. (App. F infra 95a). On March 26, 1981 a non-government defendant moved to dismiss the amended complaint, filed on February 20, 1981. (App. E infra 85a). On March 30, 1981 Judge Elfvin (from the bench) granted Petitioner Jones, Pro se, and the attorney appearing on behalf of his co-plaintiff, Corporation, leave to amend the complaint, directing service by April 3, 1981 (App. E infra 85a). On April 1st and 2nd, 1981 several, additional non-government defendants moved to dismiss the amended complaint, filed on February 20, 1981. (App. E infra 85a).

In particular, all respondents contended that Petitioner Jones lacked standing to sue in this case, and that Petitioner Jones' amended complaint failed to state a claim upon which relief could be granted, and that Petitioner Jones could not represent his co-plaintiff, Corporation.

On April 3, 1981 Petitioner Jones, Pro se, and the attorney appearing on behalf of

his co-plaintiff Corporation, filed a jointly signed "Amended and Supplemental Complaint", as authorized by the court, on March 30, 1981. (App. G infra 96a-168a). It should now be pointed out, with special emphasis, that Petitioner Jones, and his co-plaintiff's attorney's filing of the authorized "Amended and Supplemental Complaint", on April 3, 1981, made moot, all prior versions of the complaint in this case.

On April 17, 1981 Judge Elfvin signed a Memorandum and Order, that was entered on April 22, 1981, denying preliminary injunction. (App. I infra 24a-37a). The Memorandum and Order further [without a hearing], sua sponte dismssed Petitioner Jones' individual claims, and entered judgement, upon the grounds that Petitioner Jones lacked constitutional standing to press his individual claims in this Title VI action. (App. D infra 24a-37a). The Order, in footnote 5, read:

> "Whether the amended complaint sets forth a tenable cause of acation is not now decided." (App. D infra 36a).

On appeal, the court dismissed the appeal, as a non-appealable order. Beginning on April 29, 1981, up to and including June 1, 1981, certain of the respondents moved to dismiss the "Amended and Supplemental Complaint", filed on April 3, 1981. (App. E infra 85a-88a).

On May 26, 1981 Petitioner Jones delivered to Judge Elfvin, a letter, with regards to his discharging attorney Hargrave, who had appeared on behalf of his co-plaintiff Corporation, and with regard to his great problems in hiring [conflict free] counsel, due to the influence of the union defendants. (App. H infra 169a-170a). On May 26, 1981 Judge Elfvin responded to Petitioner Jones, directing him to hire new counsel to represent the Corporation, by June 26, 1981. (App. I infra 171a-172a).

On June 15, 1981 Petitioner Jones hired attorney, Charles L. Davis (hereinafter, attorney Davis) to represent his Corporation, by executed retainer agreement. On June 16, 1981 Petitioner Jones forwarded a letter to attorney Davis, directing him to prosecute the case, as

against "ALL" the defendants. (App. J infra 173a-174a). On June 24, 1981 Judge Elfvin signed an order, substituting attorney Davis. (App. K infra 175a).

On June 25, 1981 attorney Daivs summoned Petitioner Jones to his office, and [in conflict], suggested that the complaint should be amended, and certain of the defendants should be dropped from the case. This, Petitioner Jones objected vehemently to. On June 26, 1981 Petitioner Jones forwarded a letter to attorney Davis, confirming their meeting of June 25, 1981, re-instructing him, not to drop the defendants, under any circumstances. (App. L infra 176a). On June 26, 1981 attorney Davis, [in conflict, and without Petitioner Jones' knowledge], forwarded a letter to Judge Elfvin, advising (over Petitioner Jones' prior objections) that he would be seeking leave to amend the complaint. (App. M infra 177a). on July 1, 1981 attorney Davis, without Petitioner Jones' knowledge, filed a notice of motion to amend the complaint. (App. N infra 178a-182a). On July 16, 1981 Judge

Elfvin, without Petitioner Jones' knowledge, signed an order [fraudulently] prepared by attorney Davis, granting him leave to amend the complaint. (App. O infra 183a-184a). The order, in relevant part, reads:

> "Upon reading and filing the plaintiff's notice of motion; together with supporting affidavits of Plaintiff, Walter L. Jones, president of Walter L. Jones Development Corporation, annexed hereto,".....

Unequivocally, no such affidavits by Petitioner Jones were annexed to, or submitted with attorney Davis' motion, authorizing his filing of the amended complaints. The order further directed service, by August 7, 1981.

On August 7, 1981 attorney Davis [in conflict] filed his amended complaint, without Petitioner Jones' knowledge. (App. P infra 186a-201a). Attorney Davis, further [in conflict] deleted and dropped twenty two (22) individuals, twenty three (23) entities, and the state agency, NYS DOT; all sued in the authorized "Amended and Supplemental Complaint" filed on April 3, 1981. Attorney Davis, also [in conflict] deleted the conspiracy allegations and the ad damnum

clause, as contained in the "Amended and Supplemental Complaint", filed on April 3, 1981. (App. P infra 186a-201a). See also (App. G infra 96a-168a).

On August 19, 1981 attorney Davis [in conflict, fraudulently] obtained Petitioner Jones' signature on an untitled, affidavit, and on a pleading/cover, that was purportedly going to be attached to the untitled affidavit, in support of a [purported] motion for preliminary injunction. (App. Q infra 202a-213a). On August 20, 1981 attorney Davis [in conflict] and [without leave of court] filed an additional complaint, entitled "Second Amended Complaint" (App. R infra 214a-228a). The "Second Amended Complaint" was dated August 14, 1981, and was [fraudulently] annexed to the pleading/cover that Petitioner Jones signed, for placement on his affidavit. (App. S infra 229a).

The fraudulently obtained verification by attorney Davis was to have it appear, in the Record, that Petitioner Jones had authorized his dropping of the subject defendants, in the

[unauthorized] "Second Amended Complaint", after Judge Elfvin, and attorney Davis were both expressly advised of Petitioner Jones' position, regarding this issue. (App. H,I,J,L, infra 169a-174a, 176a177a),

No other pleading in this entire case was ever verified by Petitioner Jones, in hand manuscript, on the inner pleading/cover; except the cover that accompanied attorney Davis' [unauthorized, fraudulently filed] "Second Amended Complaint"; emphasis supplied.

It should now be pointed out, with special emphasis, that attorney Davis' "Second Amended Complaint", filed on august 20, 1981 contained the same deletions, and substance, as did his first amended complaint, filed on August 7, 1981. The only substance change was the annexing of his (attorney Davis') pleading/cover, containing Petitioner Jones' fraudulently obtained verification/signature, that was to be annexed to Petitioner Jones' affidavit. Petitioner Jones' affidavit was also filed on August 20, 1981, immediately after attorney Davis filed the "Second

Amended Complaint." (App. E infra 90a).

On August 26, 1981, during the preliminary injunction hearing, Petitioner Jones learned that attorney Davis had amended the complaint. Petitioner Jones repeatedly objected, and expressly direceted attorney Davis to reinstate the dropped defendants. (App. T infra 230a).

On October 7, 1981 Judge Elfvin entered a Memorandum and Order, dated October 6, 1981, in support of this Order, entered on August 28, denying attorney Davis' motion for preliminary injunction. (App. E infra 90a); reported at 524 F. Supp. 23 (1981). [Immediately] thereafter, on October 8, 1981, Judge Elfvin [sua sponte] issued an additional order, to show cause, directing Plaintiff, [attorney Davis] to show cause, on October 19, 1981, why the individuals, and entities deleted [by attorney Davis], in his amended complaint, dated August 7, 1981, should not be dropped from the lawsuit, pursuant to Fed. R. Civ. P. Rule 21, and the action be deemed dismissed, as to each of them. (App. U infra 231a-233a). See also (App. E infra

91a).

On October 19, 1981, attorney Davis [in conflict] made no appearance. Judge Elfvin noted the new attorney's non-appearance, directing the respondents' attorneys to submit order, dropping the defendants, as listed in the order to show cause order. (App. E infra 92a).

On November 2, 1981, Judge Elfvin signed the order, prepared by the respondent's attorney, and entered same, on November 3, 1981, dropping the defendants [without leave, to further amend, and with prejudice] (App. V infra 234a-238a). The November order addressed the "Second Amended Complaint", dated [August 14, 1981] filed on August 20, 1981, by attorney Davis [in fraud] and [without leave of court]. (App. V infra 236a).

On September 23, 1982, attorney Davis forwarded a letter to Petitioner Jones, requesting to withdraw, from the case. (App. W infra 239a) On October 14, 1981 Petitioner Jones delivered a letter and stipulation to attorney Davis, agreeing to his withdrawal. (App. X infra

240a-241a).

Faced with the aforementioned circumstances, Petitioner Jones sought to represent the Corporation, by assigning the Corporation's claims to himself, and moving. before Judge Elfvin, for leave to amend the complaint and interrogatories (App. Y infra 242a-249a). On December 7, 1982, Judge Elfvin denied Petitioner Jones' motion, and approved attorney Davis' withdrawal. (App. BB infra 255a). On appeal, the court affirmed, reported at 722, F 2d 2a (1983).

Pursuant to the aformentioned [conflicting] circumstances involved in this case, Petitioner Jones hired several additional attorneys, to prosecute the [Corporation's] claims, and to seek reinstatement of the dropped defendants, joinder of parties, as well as reconsiderations, pertaining to his individual claims, from January 1984 through 1985.

Petitioner Jones reappeared in this case, Pro se, for himself, in August of 1985, jointly with the attorney, who represented his Corpora-

tion. Petitioner Jones moved for reconsideration, as to this individual claims, and for other relief, proceeding jointly with the Corporation's attorney, in 1985.

In particular, all efforts by Petitioner Jones, Pro se, to be reinstated, and to join parties, were denied, in 1985, by Judge Elfvin, and all efforts by attorneys, on behalf of the Corporation, seeking reinstatement of the dropped defendants, and for other reliefs were denied, in 1985, by Judge Elfvin, premised upon Judge Elfvin's prior (unconstitutional) decisions, issued on April 17, 1981, and on November 2, 1981. (App. D infra 45a-79a). On appeal, the court dismissed Petitioner Jones' appeal, for non-finality, and denied a Writ of Mandamus (App. Z infra 250-251). Certiorari was denied by this Court, on November 3, 1986 , reported at U S 107 S. Ct., 404.

On October 2, 1986, Magistrate Maxwell entered an order, directing all parties who intended to conduct discovery, or other pre-trial proceedings to notify the court within 45 days.

(App. AA infra 252a-254a). On October 21, 1986, the Petitioner's Corporation's attorney, James A. W. McLeod, moved, by order to show cause, for a stay of discovery, pending the idividual Petitioner's Petition for Certiorari to the United States Supreme Court (App. BB infra 255a). On November 10, 1986, the Petitioner's Corporation's attorney filed an amended motion for leave to amend complaint, and substitute parties (App. BB infra 256a).

On December 9, 1986, the individual Petitioner, Pro se, filed a notice of motion, joining the attorney, who was representing the Corporation. (App. BB infra 256a). In particular, Petitioner Jones sought reconsideration and revision of the (unconstitutional) orders issued on April 17, 1981, and on November 2, 1981.

The respondent attorneys moved in opposition to Petitioner Jones' motion, and for the imposition of sanctions, as against the Petitioner. (App. BB infra 256a-257a). On January 8, 1987, Petitioner Jones, and his Corporation's attorney filed a joint notice of supplemental

and cross motions, for declaratory relief, preliminary injunction, and the imposition of sanctions, as against the respondents. (App. BB infra 256a).

Motion proceedings were held before Magistrate Maxwell, on January 16, 1987, wherein the Magistrate refused to allow Petitioner Jones to participate in the proceedings, based upon Judge Elfvin's prior (unconstitutional) orders, issued on April 17, 1981, and on November 2, 1981 (App. CC infra 266a-279a). Magistrate Maxwell further, under the threat of sanctions, caused the Petitoner's Corporation's attorney to withdraw his motion for leave to amend complaint. (App. CC infra 275a-276a).

On January 20, 1987, Petitioner Jones filed a notice of appeal, to Judge Elfvin, from the oral decision of Magistrate Maxwell, made on January 16, 1987. (App. BB infra 257a).

On January 23, 1987 Petitioner's Corporation's attorney filed a notice of appeal for Judge Elfvin, from the oral decision of Magistrate Maxwell, made on January 16, 1987 (App

BB infra 257a).

On January 28, 1987 Petitioner Jones filed an amended notice of motion for declaratory relief, reconsideration, substitution of parties, and for leave to amend complaint, returnable, before Judge Elfvin. (App BB infra 257a).

On January 28, 1987, Magistrate Maxwell entered his written order, denying the motion of Petitioner Jones, to amend complaint....., granting [with prejudice] the Petitioner's Corporation's attorney application to withdraw its motions to amend,.... Magistrate Maxwell further nullified the interrogatories previously filed, by the attorney, on behalf of the Corporation, and ordererd no further motion shall be filed to amend complaint, and made a scheduling order, as to discovery completion (App. DD infra 280a-287a).

On February 2, 1987, the Petitioner filed amended notice of appeals to Judge Elfvin, from the order of Magistrate Maxwell, entered on January 28, 1987 (App. BB infra 258a). On February 4, 1987, Judge Elfvin entered an order, refusing

to address Petitioner Jones' Pro se amended motion, filed on January 28, 1987, based upon his and Magistrate Maxwell's prior decisions. (App. EE infra 288a-289a).

The Respondents filed notices for deposition on the Petitioner's Corporation, during the period of January 23, 1987 to February 18, 1987, scheduled for March 2, 1987 (App. BB infra 257a-259a).

On February 19, 1987, Petitioner Jones, and the Corporation's attorney withdrew their appeals to Judge Elfvin, and thereafter proceeded and filed a joint notice of appeal to the U.S. Court of Appeal, for the Second Circuit (App. FF infra 290a-291a). See also (App. BB infra 260a). Petitioner Jones and the Corporation's attorney jointly filed a notice of cross motion for a stay of all proceedings, on February 19, 1987, pursuant to Rule 62(c), pending their appeal to the U.S. Court of Appeals (App. GG infra 292a). On February 20, 1987, the clerk, Edward P. Gentner issued an AO 456 notice, which read, "all matters sine die, pending PLTF appeal

to C.A. 2, filed 2/19/87 (App. HH infra 293a).

Due to all of the circumstances, as heretofore set forth, Petitioner Jones did not appear at the scheduled deposition/hearing on March 2, 1987, based upon the "sine die" notice (staying) "all matters" pending appeal to the Court of Appeals, and based upon no procedural steps being taken by the respondents, pertaining to the "sine die" notice, and based upon the individual Petitioner's Pro se claims being (unconstitutionally) dismissed from the case, on April 17, 1981, and based upon attorney Davis' [in conflict] fraudulently and unconstitutionally dropping 22 individuals, 23 entities, and a state agency from the case on November 22, 1981, by Judge Elfvin, and based upon the individual Petitioner's being unconstitutionally denied his statutory rights to self representation, and based upon the individual Petitioner's being denied his statutory rights of being deposed upon a complaint thata he, as a Pro se claimant, participated in the drafting of, and based upon the individual Petitioner's being deprived of

his statutory entitlement, protected by the Fifth and Fourteenth Constitutional Amendments in this case.

The respondents' attorneys moved, before Magistrate Maxwell, by order to show cause, on March 2, 1987, to compel Petitioner Jones to give deposition testimony, as the corporate officer of his Corporation (App. BB infra 260a).

Petitioner Jones did not receive notice of the March 2, proceeding, and was not aware of the show cause proceeding, held on that day. At the proceeding held on March 2, 1987, Magistrate Maxwell inquired as to whether Petitioner Jones was aware of the proceedings, and was advised by the Corporation's attorney, that Petitioner was not aware of the proceeding (App. JJ infra 294a-298a).

On March 10, 1987, Magistrate Maxwell filed and entered an order, signed on March 9, 1987, directing Petitioner Jones, as president of his co-plaintiff Corporation, to produce documents and give deposition testimony, on March 16, 1987 through March 19, 1987 (App. KK infra

299a-301a).

On March 16, 1987, Petitioner appeared at the scheduled deposition, and produced all documents, and other relevant items, for the respondents' inspection.

Petitioner Jones, however, declined to answer deposition questions, on March 16, 1987, and requested an adjournment and a hearing, based upon the "sine die notice" (staying) "all matters", pending appeal to the U.S. Court of Appeals, and based upon no procedural steps being taken by the respondents, pertaining to the "sine die" notice, and based upon the individual Petitioner's claims being (unconstitutionally) dismissed from the case on April 17, 1981, by Judge Elfvin, and based upon attorney Davis' [in conflict, fraudulently and unconstitionally] dropping 22 individuals 23 entities, and a state agency from the case, in August of 1981 (App. LL infra 302a - 376a).

Petitioner Jones further declined to answer depositions, based upon 22 individuals and 23 entities, and a state agency being [unconsti-

tutionally] dropped from the case by Judge Elfvin, on November 2, 1981, and based upon Petitioner Jones' being [unconstitutionally] denied his statutory rights to self representation in this case, and based upon Petitioner Jones' being denied his statutory right to being deposed upon a complaint that he, as a Pro se claimant participated in the drafting of, and based upon Petitioner Jones' being deprived of his statutory entitlements, protected by the Fifth and Fourteenth Constitutional Amendments, in this case (App. LL infra 302a).

Beginning on March 19, 1987, up to and including April 7, 1987, certain of the respondents' attorneys filed motions and supporting affidavits for dismissal of the case (App. BB infra 262a-263a). On April 13, 1987, a proceeding was held before Judge Elfvin, which was not recorded, or transcribed (even though the attorney for the Corporation requested that the proceeding be recorded) with regard to the respondents' motions to dismiss (App. MM infra 377).

On April 15, 1987 Judge Elfvin issued

an order, dismissing the case. The order was filed on April 16, 1987, and the judgement was filed on April 17, 1987 (App. B infra 16a-22a).

On June 15, 1987 Petitioner Jones, and attorney McLeod, appearing for the Corporation, filed a joint notice of appeal to the Court of appeals, from Judge Elfvin's decision and judgement, dismissing the case (App. NN infra 378a .

On December 31, 1987 The Court of Appeals affirmed Judge Elfvin's decision and judgement, without addressing Petitioner Jones' constitutional standing issue, and without addressing the due process issues, and without addressing the fraud issues; all raised in the Appellant's Brief, on appeal (App. A infra 1a-15a).

It is therefore, of widespread public importance, that this Court consider the issues presented here, so that the lower courts and the public may be guided authoritatively, with respect to the constitutional limitations on district courts' sua sponte dismissing a Pro se claimant's civil rights claims, who is an

aggrieved member of the special class,for whose benefit the Civil Rights Act of 1964 was enacted.

The holdings below, if allowed to stand, will, in effect, undermine numerous decisions of this court and lower courts, providing a private cause of action, to those aggrieved persons, who are beneficiaries of the Civil Rights Act of 1964, and will deprive Petitioner Jones of his statutory and constitutional entitlement and property interests, protected by the due process clauses of the Fifth and Fourteenth Constitutional Amendments.

Due to Petitioner Jones, Pro se, appearing for himself, and being financially unable, to hire qualified legal counsel, to appear before this court, on behalf of his solely owned corporation, his individual and corporate claims in this case should effectually merge, before this Court.

REASONS FOR GRANTING THE PETITION

This case presents important questions concerning Petitioner Jones' Pro se claims being, sua sponte dismissed by the district court, with-

out due process, and concerning Petitioner Jones' Pro se, being deprived of his constitutional standings, without due process, and concerning Petitioner Jones' Pro se, being, denied his statutory rights to self representation, without due process, and concerning a former attorney, and the district court's dropping of 46 defendants, from this case, upon fraud, and without due process, and concerning the district court's dismissal of the case, as a sanction, for Petitioner Jones' seeking an [adjournment, or hearing], and declining to answer deposition questions, based upon constitutional grounds, as set forth, heretofore.

The Court of Appeals, in contrast with this and other Courts, disregarded these substantive issues, and affirmed the district court.

Addressing Question No. 1

The unprecedented rulings below seriously disregarded this court's decision in Cannon v. University of Chicago, 441 US 677, (1979), regarding the constitutional standing of an "aggrieved" person", for whose special benefit,

Title VI was enacted.

Furthermore, the conclusion that a sole shareholder, who is a beneficiary of the ACTS does not have standing, to assert claims is misplaced and patently inconsistent with the decision of this Court, and the lower Courts, concerning constitutional causes of action, under Title VI; particularly in light of this Court's guidelines, laid down by the Bossier, Cort, and Cannon decisions. See also Campbell v. Kruse, 334 US 809 (1977); Gladstone Realtors v. Village of Bellwood, 441 US 91 (1979).

In Cannon v. University of Chicago, supra, this court has put to rest, the issue of the existence of a private cause of action, where as here, congress enacts legislation for a particular purpose, and forbids the expenditure of federal funds in a manner that will discriminate against members of designated classes in the execution of that purpose, "members of those groups [either individually] or [as a class] may bring an action in federal court to seek redress for such discrimination. 441 US at

717 . See also Cort v. Ash, 422 US 66 (1975).

Although Cannon concerned sex discrimination under Title IX, the Court made clear that the same criteria applied, and originated from Title VI; indeed the Court clearly stated that Title IX was patterned after Title VI, by Congress, in passing Title IX, 441 US 685 (1979). Title VI, once enacted, created a statutory entitlement and property interest to Petitoner Jones, protected by the due process clauses of the Fifth and Fourteen Amendments.

This Court held in Cannon, that it is not necessary to show an intention to create a private cause of action in those situations where it is clear that federal law has granted a class of persons certain rights. 414 US 694-95. Petitioner Jones therefore, has a private cause of action, jointly with that of his solely owned, co-plaintiff Corporation, which may effectually merge in this case; Howard Sec. Serv. v. Johns Hopkins Hospital 516, F. Supp. At 513 (1981), in that the Supreme Court has inequivocally decided that a private cause of action could be

maintained by a [person, or persons] who are "aggrieved" benificiaries of Title VI, Campbell v. Kruse 334 US 809 (1977).

In other words, an "aggrieved" individual person of the Negro race, under the Civil Rights Acts of 1964, as here, has constitutional standings to a private cause of action in the federal courts, and the requirements of Article III have been satisfied, as to Petitioner Jones' being an "aggrieved person"; Gladstone Realty v. Village of Bellwood, 441, US 91 (1979).

Moreover, the lower Courts have consistently held that Title VI permits [any aggrieved party to sue], Schlafly v. Volpe, 7 E.P.D. 7379 (7th Cir. 1974); Bossier Parish School Board v. Lemon 370 F 2d 847, 852 (5th Cir. 1967),

Montgomery Improvement Assn. v. U.S. Dept. of H.U.D., 645 F 2d 291 (5th Cir. 1981); Blackshear Residents Org. v. Housing Authority of austin, 347 F Supp. 1138, 1146 (W.D. Tex. 1972); Hawthorne v. Kenbridge Recreation Assn. 341 Supp. 132, 133-134 (ED Va. 1972)

This Court has most recently upheld this position under 42 USC 1981 in Saint Francis v. Al-Khazra, 107 S Ct. 2022 (1987). the court said: "Based upon the history of 42 USC §1981, there is little trouble in concluding that Congress intended to protect, from discrimination, indentiable classes of persons who are subject to intentional discrimnation, solely because of their ancestry or ethnic characteristics," citing Hernandez v. Texas, 347 US 475, 479 (1954); Oyama v. California, 332 US 633, 646 (1948); Hirabayashi v. United States, 320 US 81, 100 (1943); Hurd v. Hodge, 334 US 24, 32 (1948).

Although §1981 does not, itself, use the word "race", the court has construed the Section to forbid all "racial" discrimination in the making of private, as well s public contracts. Runyon v. McCrary, 427 US 160, 168 (1976), moreover; §1981 further provides that "all persons within the jurisdiction of the United States shall have the same rights in every state and territory to ..... "sue, be parties, give evi-

dence and to the full and equal benefit of all laws and proceedings, for the security of persons and property, as is enjoyed by white citizens".....emphasis added.

Based upon this statute, and the foregoing authority, Petitioner Jones was entitled to "sue" and be a party in this case, jointly with that of his solely owned corporation, for discrimination against his individual person, and for deprivation of his individual, statutory entitlement and property interests, protected by the due process clauses of the Fifth and Fourteenth Amendments; in that, to deal with the corporation is, practically speaking, to deal with Petitioner Jones. Under these limited circumstances, Petitioner Jones has an individual cause of action, and the individual and corporate claims, effectually merge; Howard Sec. Serv. v. Johns Hopkins Hospital, 516 F Supp. at 513 (1981), footnote 12.

Petitioner Jones, Pro se [before his claims were sua sponte deismissed] asserted a personal claim, under §1981, and Title VI in the "Amended

and Supplemental Complaint", jointly with that of his corporation, given the limited basis for finding that the corporation has a cause of action under §1981, and Title VI. The individual and corporate claims, "may well effectually merge" in this case, Howard Sec. Serv. v. Johns Hopkins Hospital; 516 F Supp. at 513 footnote 12 (1981).

Furthermore, on [April 17, 1981] district court Judge Elfvin [sua sponte] and [unconstitutionally] by interlocutory order and judgement, dismissed Petitioner Jones' Pro se claims in this case, without an appropriate hearing and are grounds for reversal. The Court of Appeals, nonetheless, disregarded this unconstitutional infringement and restraint, by ommitting to address the issues, and affirming the district court's dismissal of the case, as a sanction, on [April 15, 1987].

It has been held that:

Sua sponte dismissal of a Pro se claimant's claims is, by itself, grounds for reversal, Lewis v. State of New York, 547 F 2d 4, 6, (2nd

Cir. 1976); Mawhiney v. Henderson 542 F 2d 1, (2nd Cir. 1976); Burgin v. Henderson, 536 F 2d 501 (2nd Cir. 1976); Frankos v. LaVallee, 535 F 2d 1346 (2nd Cir. 1976); Dodd v. Spokane, Washington, 393 F 2d 330 (9th cir. 1968); Literature Inc., v. Quinn, 482 F 2d 372, 374 (1st Cir. 1973); California Diversified Promotions, Inc., v. Musick, 505 F 2d 278, 281 (9th Cir. 1974); Jefferson Fourteenth Assoc. v. Wometco Depuerto Rico, et al, 695 F 2d 524 (11th Cir. 1985).

In California, the court held that the "trial court should have given notice of its intention to dismiss, and should have provided an opportunity for plaintiffs to submit written memorandum in opposition to such motion, a hearing, and an opportunity to amend the complaint", 505 F 2d 278, 281 (9th Cir. 1974).

The basis for this rule can be found in the case of Anderson National Bank v. Luckett 321, US 223, 246 (1944), which held: "The fundamental requirement of due process is an opportunity to be heard upon such notice and

proceedings, as are adequate to safeguard the rights for which the constitutional protection is invoked." 321 US 246 (1944).

In Lewis, the Court held: that the "sua sponte dismissal by the district court Judge was improper, in view of the fact that dismissal deprived prisoner of opportunity to respond to any possible motion to dismiss, by seeking leave to amend, or by setting forth argument supporting validity of his claim"..... 547 F 2d 4, 6, (2nd Cir. 1976) 42 USC 1983.

In Jefferson, the court held that the "District Court's sua sponte order, dismissing third party claims deprived third party plaintiff of its rights to procedural due process", USCA Const. Amend. 5, 14, 695 F 2d 525 (11th Cir. 1983)

It is therefore uniformly established through-out the circuits that Judge Elfvin's sua sponte dismissal of Petitoner Jones' Pro se civil rights claims, without a hearing in this case, is, by itself, grounds for reversal.

Judge Elfvin's [sua sponte] dismissal of

Petitioner Jones' claims on April 17, 1981, in effect, [unconstitutionally] denied Petitoner Jones his statutory rights to self representation in this case. Nonetheless, the court of appeals, in contrast with this and other Courts, disregarded this issue, and affirmed Judge Elfvin's dismissal of the case.

The right to self representation in civil cases, conferred by §35 of the Judiciary Act of 1789, although not enjoying the constitutional protection subsequently afforded to the right of self-representation in criminal cases, is a right of high standing; not simply a practice to be honored or dishonored by a Court, depending on its assessment of the desiderata of a particular case. Faretta v. California, 422 US 826-830 830 N.9 (1975).

Moreover, the Second Circuit, court of Appeals recognized in Phillips v. Tobin, 548 F 2d 408, 411 (1976), the "long established principle that in federal courts, the parties have the right to plead and conduct their own case....". See also O'Rilley v. New York Times,

692 F 2d 863 (2nd Cir. 1982).

This Court has held that: Pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers", and "that a Pro se claimant is entitled to an opportunity to offer proof, before dismissal of his claims", Hanes v. Kerner 404 US 519 (1972). In accordance to this principle, Petitioner Jones, Pro se alleged a cause of action, in the "Amended and Supplemental Complaint", and was entitled to offer proof, in this case, before dismissal of his claims, seeking damages for claimed deprivation of rights under Title VI. 404 US 521 (1972). See also Conley v. Gibson 355 US 41 (1957); Dioguarde v. Durning 139 F 2d (C.A. 2 1944).

In Traguth v. Zuck, 710 F 2d 90, 94, (2nd Cir. 1983), the Court of Appeals for the Second circuit held that, "Implicit in right to self - representation is obligation on part of court to make reasonable allowance to protect Pro se litigants from inadvenrtant fortfeiture of important rights because of their lack of

legal training". 28 USCA §1654. Haines v. Kerner, 404, US at 520 (1972); Holmes v. Goldin, 615 F 2d 83, 85 (2nd Cir. 1980). See Merrick v. American Security & Trust Co., 107 F 2d 271 (D.C. 1939), which held, "Even though he is not a licensed attorney, a person may plead his own case in court, or draft his own legal papers, to which he is in a substantial sense, a party, and any papers which clearly concern his own affairs."

In Connely, this Court held that, "Failure of complaint to set forth specific facts to support its general allegations of discrimnation, was not a sufficient ground for dismissal of the suit, since the Federal Rules of Civil Procedure do not require a claimant to set out, in detail, the facts, upon which he bases his claims, 355 US 47-48 (1957), Rule 8(a) (2) 28 USC.

This Court said, in Connely, " Such simplified notice pleading" "is made possible by the liberal opportunity for discovery and the other pretrial procedures established the rules

to disclose more precisely the basis of both claim and defense, and to define more narrowly, the disputed facts and issues." 355 US at 46-47 (1951).

Following the simple guide of Rule 8(f) that "All pleadings shall be so construed, as to do substantial justice", in which the purpose of pleadings is to facilitate a proper decision, on the merits, C.F. Maty v. Grasselli Chemical Co., 303 US 197 (1938).

It has been held; where the complaint seeks recovery, directly under the constitution, federal question jurisdiction is established, and dismissal for lack of jurisdiction is appropriate only; (1) Where the court decides that the federal claim is immaterial, and made solely for the purpose of obtaining jurisdiction, or; (2) Where the claim is wholly unsubstantiative and frivolous, Bell v. Hood, 327 US 678 (1946).

Here, the "Amended and Supplemental Complaint" in this case, was drafted by the individual Petitioner, Pro se, and joined by the attorney who was hired to represent his solely owned

Corporation. The complaint alleged, as jurisdictional basis, 28 USC Sections 1331 and 1343. Section 1331 and 1343 vest in the district court, original jurisdiction, over civil actions arising under the constitutional laws, or treaties of the United States.

The complaint further alleged all claims on behalf of Petitioner Jones, jointly with that of his closely held corporation, as "Plaintiffs", in that he is the sole share holder, and under these limited circumstances, Petitioner Jones' and his Corporation's claims may "well effectively merge." Howard Sec. Serv. v. Johns Hopkins Hospital, 516 F Supp. at 513 (1981), footnote 12; See also Miller v. Stanmore, 636 F 2d at 989 (1981).

In sum, Petitioner Jones, Pro se, respectfully contends that he has constitutional standings to sue, and be party, and a statutory right to self representation, in this lawsuit, jointly with that of his solely owned Corporation, for the protection of his statutory entitlements and property interests, protected by

the due process clauses of the Fifth and Fourteenth Constitutional Amendments, and as protected by the equal protection clauses of the Fourteenth Constitutional Amendment. Cannon v. University of Chicago, 441 US 677, 685, 695 (1979); Haines v. Kerner 404 US 519-521 (1972); Conley v. Gibson, 335 US 41, 45-46 (1957); Hernandez v. Texas, 347 US 475 (1954); Howard Sec. Serv. v. Johns Hopkins Hospital, 516 F Supp. 508, 513 (1981); Lewis v. State of New York, 547, F 2d (2nd Cir. 1976); Traguth v. Zuck, 710 F 2d 90, 94 (2nd Cir. 1983).

In contrast, the decision of the Court of Appeals, in this case would subject Petitioner Jones, to being denied his individual, constitutional and statutory rights, by narrowly, and inappropriately holding that Petitioner Jones, as "sole shareholder does not have standing to assert claims, alleging wrong to the Corporation", 836, F 2d at 736 (1987).

Based upon the foregoing authority, and the circumstances in this case, jurisdiction should be granted, Cannon v. University of Chica-

go, 441, US 677 (1979); Saint Francis v. Al-Khazra, 107 S Ct. 2022 (1987); Anderson National Bank v. Luckett, 321 US 223, 246 (1944); Haines v. Kerner, 404 US 519 (1972).

Addressing Question No. 2

Petitioner Jones claims that he was denied substantial due process, through arbitrary discretionary abuse, and attorney fraud, including the dropping of 22 individuals, 23 entities, and a state agency, from the case, over Petitioner Jones' express objections, without a hearing, and upon fraud. The Court of Appeals disregarded these issues, and affirmed the district court, in contrast with this and other Courts.

This Court held in, United States v. Trockmorton 98 US 61, 65, 66 (1878); "Fraud upon the Court confers euitable jurisdiction on a court, to set aside a judgement, where an attorney fraudulently, or without authority, assumes to represent a party, and connives, at his defeat; or where the attorney coruptly sells out his client's interests to the other side", as here.

This position has been constantly upheld, and adhered to, by the Circuit Courts, Lutress v. United States 644, F 2d 125, 126 (9th Cir. 1950). Taff v. Donnellan Jerome Inc., 407 F 2d 807, (7th Cir. 1969). In Taff, the 7th Circuit, Court of Appeals held, "Rules relating to seting aside of judgement does not limit power of Court to set aside judgement", for fraud upon court.

This Court held, If judgement is rendered without due process of law, it is without juridiction, and (thus) void, Johnson v. Zerbst, 304 US 458 (1938). The Circuit Courts have adhered to this position, Bass v. Hoagland, 173 F 2d 205 (5th Cir. 1949); VTA Inc., v. Airco et al, 597 F 2d 220 (10th Cir. 1979). In VTA, the 10th Circuit Court of Appeals held, "If judgement is void, orders based on it, are void, if voidness is found, relief is not a discretionary matter, but is manditory." emphasis added 597 F 2d 220 (1979).

In this case, on April 17, 1981 Petitioner Jones' Pro se claims were sua sponte dismissed

by the district court, without a hearing, after filing of the "Amended and Supplemental Complaint" on April 3, 1981.

Thereafter, during the period of June through August, 1981, attorney Davis, who represented the Corporation, in [conflict], committed fraud upon the court, detrimental to Petitoner Jones, and his Corporation's interests, by unauthorizedly, amending, dropping and deleting the conspiracy allegations, the ad damnum clause, and by deleting and dropping 22 individuals, 23 entities, and a state agency, from the case.

On November 2, 1981, the subject 22 individuals, 23 entities, and a state agency, sued by Petitoner Jones Pro se, in the "Amended and Supplemental Complaint" on April 3, 1981, were subsequently, dropped from the case, by Judge Elfvin, without hearing, and upon fraud; all contrary to the due process clauses of the Fifth and Fourteenth Constitutional Amendments, Armstrong v. Manzo, 380 US 545, 552 (1960); Matthews v. Eldridge, 424 US 319, 334 (1976).

This Court wrote, in Armstrong, that:

"Many controversies have raged about the cryptic and abstract words of the due process clause, but there can be no doubt that, at a minimum, they require that deprivation of life, liberty, or property, by adjudication, be proceeded by notice, and opportunity for a hearing, appropriate to the nature of the case", citing Mullane v. Central Hanover Tr. Co., 339 US 306 at 313 (1950).

In Klappott, 350 US 602 (1949) this Court reversed the district court and the Court of Appeals, on Certiorari, where a party sought relief, more than four years after the district court had, without hearing or evidence, entered a default judgement. 350 US 602 (1949) Rule 60 (b) 4 28 USC.

Moreover, the Court of Appeals for the Second Circuit held, in Crosby v. Bradstreet Co., 312 F 2d 438 (2nd Cir. 1963) that: "Even where a party consented to the entry of an order which he sought to be relieved from, was void, as an unconstitutional prior restraint, some [30 years] after the entry of the order.

See Fed. Rules Civ. Proc. 60 (b) 4 28 USC, 18 USC 1341. See also Near v. Minnesota extral, Olson, 283 US 697 (1931); Shelly v. Kramer, 334 US 1 (1948).

It has been held; "There is no statute of limitations for fraud on the court, and jurisdiction exists to consider such a claim, even if there are no adversary parties then present before the court", Valerto v. Boise Cascade Corp., 80 FRD at 640 (18-19) (1978); Toscano v. Commissioner of Internal Revenue Service 441 F 2d 830, 834 (9th Cir. 1971).

This Court held in Crosby, that: "The district court was without power to make an order which constituted a restraint by the United States, against the rights of the parties ..... 312 F 2d 438 (1963). In contrast, the decision of the Court of Appeals affirmed the district court, in this case; disregarding this historical authority, and disregarding the constitutional infringements by the Corporation's former attorney, against Petitioner Jones' interests. 312 F 2d 438 (2nd Cir. 1963).

Based upon the foregoing authority, and the circumstances in this case, reversal is "manditory"; V.T.A. Inc., v. Airco, et al 597 F 2d 220, (10 Cir. 1979); Johnson v. Zerbst, 304 US 458 (1938); Klappott v. United States, 350 US 602 (1949); Armstrong v. Manzo, 380 US 545, 552 (1960), and jurisdiction should be granted.

Addressing Question No. 3

Petitioner Jones claims that the dismissal of this case was an abuse of discretion, and arbitrary,under the circumstances. The Court of Appeals disregarded the relevant facts, and affirmed the district court, in contrast with this Court and other lower courts.

In Societe International v. Rodgers 387 US 198-213 (1958), this court held: On the Record, dismissal of the complaint, with prejudice, was not justified, in view of the constitutional consideration which the question focuses upon; 357 US 197 (1979).

The court further noted, in Societe, that "The provisions of Rule 37 which are involved

here must be read, in light of the provisions of the Fifth Amendment; that no person shall be deprived of property, without due process of law, and more particular, against the decision of this Court, in Hovey v. Ellicott, 167 US 409 (1897).

In Wheling v. Columbia Broadcasting System, 603 F 2d 1084 (8th Cir. 1979), the court held: "No provision in federal discovery rules authorizes courts to impose sanctions on party who resists discovery, by asserting valid claims, on privileges".....

Here in this case, Petitioner Jones asserted, at the deposition, that his Fifth and Fourteenth Constitutional Amendments rights were being violated, and that the district court had (unconstitutionally) divested itself of personal jurisdiction over his person. These are valid constitutional claims, under the circumstances of this case, Wheling v. Columbia Broadcasting System 603 F 2d 1084 (8th Cir. 1979).

Furthermore, Petitioner Jones, Pro se, moved for an [adjournment], at the dsposition/

proceeding, pending his appeals to the Second Circuit (App. LL infra 322a). Also, in effect, was a sine die (Stay) of all proceedings, remaining in effect, until March 24, 1988, (App. HH Infra 293a), Salahuddin v. Harris, 782 F 2d 1127 (2nd Cir. 1986).

In Salahuddin v. Harris, 782 F 2d 1127 (2nd Cir. 1986) the court reversed where the Pro se plaintiff appeared at the deposition, and requested an adjournment, after responding to certain questions, 782, F 2d at 1131 (1986). None of the grounds that the district court relied on, to dismiss this case, amounted to bad faith delay of discovery.

First, defendants had not answered the plaintiffs' interrogatories, because the Magistrate had unjustly nullified plaintiffs' outstanding, unanswered interrogatories, and Petitioner Jones would not have been able to adequately respond to numerous, anticipated questions, without receiving the answers to the interrogatories.

Second, a sine die stay of "all matters" was in effect, and no procedural proceedings

were had, with regard to the nullification of same.

Third, Petitioner Jones', Pro se declining to answer deposition questions was based upon good faith view of constitutional law, Weiss v. Bonsal, 344 F 2d 428, 430 (2nd Cir. 1965).

Fourth, litigiousness, by itself is neither systematically, nor legally equivalent to Bad Faith, C.F. in Re Martin-Trigona, 763 F 2d 140 2nd (Cir. 1985).

Moreover, it is well settled law, in this Circuit, Court of Appeals, That [d]ismissal under Fed. R. Civ. P. 37 "is a drastic penalty, which should be imposed, only in extreme circumstances," Israel Aircraft, 559 F 2d at 207-208 (2nd Cir.1979). See also Societe International v. Rogers, 357 US 197, 212, (1958).

The Court of Appeals for this Circuit has consistently held, that dismissal under Rule 37 requires the district court to "strike a balance between alleviating court calendar congestion, and protecting party's rights to due process, and a fair chance to be heard"... Hard-

ing v. Federal Reserve Bank of New York, 707 F 2d 46, 50, (2nd Cic. 1983); See also Beary v. City of Rey, 601 F 2d 62, 63 (2nd Cir. 1979).

The Court of Appeals, in contrast with the foregoing authority and circumstances, in this case, affirmed the district court's dismissal of this case, on December 31, 1987, and denied rehearing on January 29, 1988; which are the issues now before this Court, and jurisdiction should be granted.

In sum, Petitioner Jones' Pro se constitutional standing, statutory rights to self-representation, and private causes should be restored to this case, and his individual claims should merge with his solely owned Corporation's claims, due to the circumstances involved. Cannon v. University of Chicago, 441 US 677 (1979); Haines v. Kerner, 404 US 519 (1972); Phillips v. Tobin, 548 F 2d 408, 411 (1976); Howard Sec. Serv. v. Johns Hopkins Hospital, 516 F Supp. at 513 (1981), footnote 12; Lewis v. State of New York, 547 F 2d 4, 6 (2nd Cir.

1976); Anderson National Bank v. Luckett, 321 US 223, 246 (1944).

The orders and judgement, entered without due process, and upon fraud,or premised thereon, should not stand, under the circumstances of this case, Trockmortan, 98 US 61, 65, 66 (1878); Johnson v. Zerbst, 304 US 458 (1938); Bass v. Hoagland, 173 F 2d 205 (5th Cir. 1949); VTA Inc. v. Airco, et al, 597 F 2d 220 (10th Cir. 1979).

Petitioner Jones should not be penalized for declining to answer deposition questions, upon sound "Good Faith" constitutional grounds. Societe International v. Rogers 387 US 198-213 (1958); Wheling v. Columbia Broadcasting System, 603 F 2d 1084 (8th Cir. 1979); Israel Aircraft Ind. Ltd. v. Standard Precision, 559 F 2d 203 1977).

The Court of Appeals declined to consider all of the circumstances involved in this case, and inappropriately premised its ruling on Cine-Forty Second Street Theatre v. Allied Artists, 602 F 2d 1062 (1979).

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

WALTER L. JONES, Pro se
for himself
167 Roebling Avenue
Buffalo, New York 14215
(716) 894-4508

May, 1988.

APPENDIX A

COURT OF APPEALS OPINION
DATED, DECEMBER 31, 1987

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 271 --August Term, 1987

(Argued: November 18, 1987

Decided: December 31, 1987)

Docket No. 87-7502

WALTER L. JONES AND WALTER L. JONES DEVELOPMENT CORPORATION, INC.,

Plaintiffs-Appellants,

-v.-

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, (NFTA); JAMES H. WOLFORD; GEORGE L. WESSEL; RICHARD C. SOUTHARD; JOHN H. DOWNING; WILLIAM G. GISEL; JOHN F. KOPCZYNSKI; WILLIAM H. WENDEL; JACK BAYER; CHESTER R. HARDT; GEORGE J. TRIMPER; ALFONSE V. BELLANCA; TIMOTHY J. TOOHEY; ERNESTINE R. GREEN; JACOB F. SCOELLKOPFV; JAMES E. KELLY; KENNETH G. KNIGHT; WILLIAM BULOW; ROBERT D. GIOIA; RONALD J. ANTHONY; RICHARD F. GALLAGHER; THEODORE BECK; URBAN MASS TRANSPORTATION ADMINISTRATION (UMTA); HIRAM J. WALKER; BROCK ADAMS; ROBERT PARTRICELLI; JOSE CAMALLONGA; RICHARD S. PAGE; HAROLD B. WIL LIAMS; WESLEY A. PLUMMER, WILHEMENIA BURKE; ARTUR B. TEELE; ANDREW LEWIS (Officials and Administrators); NEAL CAVANAUGH; and SIEGFRIED CONSTRUCTION CO., INC.; JOHN J. SANDERS and SLATTERLY ASSOCIATES, INC.; HERBERT F. DARLING and HERBERT F. DARLING, INC.; IRVING FRANCIS and JOHN W. COWPER CO., INC.; S.H. BARTHOLOMEW and FRUIN/COLNON/TOM TRAYLOR/TRAYLOR BROS.; WILLIAM STERLING and ONYX CONSTRUCTION & EQUIPMENT CO.; JOHN H. FUHERMANN and CONSTRUC-

TION INDUSTRY EMPLOYERS ASSOCIATION; DONALD J. BLAIR and BUILDING TRADES COUNCIL OF BUFFALO AND VICINITY; RONALD M. FINO and LABORERS LOCAL UNION NO. 210; JOSEPH COLERN and MICHAEL FITZPATRICK; IRON WORKERS LOCAL UNION NO. 6; LEONARD S. CONIGLIO and CEMENT MASONS LOCAL UNION NO. 511; HERMAN F. BODEWES and CARPENTERS DISTRICT COUNCIL; LEO HOPKINS and OPERATING ENGINEERS LOCAL UNION NO. 17, 17A, 17B; LAWRENCE J. STROH and NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION; PLUMBING CONTRACTORS ASSOCIATION OF ERIE COUNTY, N.Y., INC.;ALBERT ELIA BUILDING COMPANY, INC.,; LAWRENCE A. ELIA (Officer); S & M CONSTRUCTORS, INC.; JOHN DenBESTE; ELTON T. GRANT; AFL-CIO COUNCIL and GEORGE WESSSEL; CONSTRUCTION INDUSTRY COALITION FOR ECONOMIC RECOVERY WESTERN NEW YORK (Coalition) and BERNARD J. SHEVLIR, DONALD J. BLAIR and ROBERT M. LOGAN; MECHANICAL CONTRACTORS ASSOCIATION OF BUFFALO & VICINITY, INC.; (Association) and MARSHALL DAVIS (Official); BOILER MAKERS EMPLOYERS ASSOCIATION OF BUFFALO & VICINITY, LOUIS D. MADIA (Official); GREATER BUFFALO SHEET METAL & ROOFING ASSOCIATION, PAUL GILBERT (Official); ASBESTOS WORKERS LOCAL UNION NO. 4, JACK KELLEHER (Official); BOILER MAKERS LOCAL UNION NO. 7, JOHN BARRY JARZYSNKI (Official); ELEVATOR CONSTRUCTORS LOCAL NO. 14, DONALD M. WINKLE (Official); GLAZERS LOCAL UNION NO. 660, JAMES J. COYLE; LATHERS LOCAL UNION NO.32, FRANK A. SCIABARRASI (Official); PAINTERS DISTRICT COUNCIL NO. 4, JIM V. GRIFFO (Official); PLASTERERS LOCAL UNION NO. 9, SAMUEL F. ANTONIO (Official); ROOFERS LOCAL UNION NO. 74, ANGELO PAGANO (Official); SHEET METAL WORKERS LOCAL UNION NO. 71, GEORGE J. CUDDIHY (Official); STEAMFITTERS LOCAL UNION NO. 395. DONALD J. BLAIR (Official); TILE, MARBLE & TERRAZZO WORKERS HELPERS LOCAL UNION NO. 8, DANIEL J. MECCA (Official); TRUCK DRIVRS LOCAL UNION NP. 449, ERWIN M. WALKER (Official); and PLUMBERS LOCAL UNION NO. 36, LARRY CONNELLY (Official): & NEW YORK STATE DEPARTMENT OF TRANSPORTATION.

Defendants-Appellees

B e f o r e :

LUMBARD, KERSE and ALTIMARI,
Circuit Judges.

Appeal from an order of the United States District Court for the Western District of New York (Elfvin, J.) dismissing complaint pursuant to Fed. R. Civ. P. 37 because of appellant Jones' refusal to answer any questions at a scheduled deposition.

Affirmed.

JAMES A. W. McLEOD, Buffalo, N.Y., for plaintiff-appellant Walter L. Jones Development Corporation.

PAUL I. PERLMAN, Buffalo, N.Y. (Hodgson, Russ, Andrews, Woods & Goodyear, of Counsel) for Defendants-appellees Siegfried Construction Co., Inc., Siegfried/Slattery, Fruin-Colnon Corporation Traylor Bros, Inc., S & M/McHugh/Kenny, National Electrical Contractors Association, Plumbing contractors Association of Erie County, Marine Midland Bank, NA, executor of Cornelius J. Cavanaugh, deceased, John J. Sanders, S.H. Bartholomew.

DOMINIC J. TERANOVA, and MARY PERLA, Buffalo, N.Y. for defendant-appellee Niagara Frontier Transportation Authority.

ROGER P. WILLIAMS, United States Attorney, and JOSEPH B. MISTRETT, Buffalo, N.Y. for defendant-appellee Urban Mass Transportation Authority.

RICHARD A. CLACK, Buffao, N.Y. (Saperston & Day, P.C. of Counsel) for defendants-appellees The John W. Cowper Co., Inc. and Irving Francis.

WILLIAM J. McDERMOTT, Niagara Falls, N.Y. for defendants-appellees Albert Elia Building Co., Inc. and Lawrence Elia.

RICHARD LIPSITZ and RICHARD P. WEISBECK, JR., buffalo, N.Y. (Lipsitz, Green, Fahringer, Roll, Schuler & James, of Counsel), for defendants-appellees Donald J. Blair and Building Trades Council of Buffalo and Vicinity; Ronald M. Fino and Laborers Local Union No. 210; Joseph F. Colern and MIchael Fitzpatrick, Iron Workers Local Union O. 6; Leonard S. Coniglio and Cement Masons Local Union No. 511; Leo Hopkins and Operating Engineers Local Union No. 17, 17A, 17B; Donald J. Blair as an official of the Construction Industry Coalition for Economic Recovery of Western New York; Greater Buffalo Sheet Metal & Roofing Association, Paul Gilbert (Official); Asbestos Workers Local Union No. 4, Kack Kelleher (Official); Boiler Makers Local Union No. 7, John Barry Jarzynski (Official); Bricklayers Local Union No. 45, James Joseph McGovern; Electrical Workers Local Union No. 41, Melbourne H. Rich (Official); Elevator Constructors Local Union No. 14 Donald M. Winkle (Official); Glazers Local Union No. 660, James J. Coyle; Painters District Council No. 4, Jim V. Griffo (Official); Plasterers Local Union No. 9, Samuel F. Antonio (Official); Roofers Local Union No. 74, Angelo Pagano (Official); Sheet Metals Workers Local Union No. 71, George J. Cuddihy (Official); Steamfitters Local Union No. 395, Donald J. Blair (Official); Tile, Marble & Terrazzo Workers Helpers Local Union No. 8, Daniel J. Mecca (Official).

JEROME C. GORSKI, Buffalo, N.Y. (Gorski & Manias, of Counsel for defendants-appellees Buffalo AFL-CIO Council and George L. Wessel.

E. JOSEPH GIROUX, JR., Buffalo, N.Y. for defendants-appellees Carpenters District Council of Buffalo & Vicinity, U.S. Plumbers Local Union No. 36, Truck Drivers Local Union No. 449, Herman F. Bodewes, Lathers Local Union 32, Frank A. Sciabarrasi, Erwin M. Walker, Larry Connelly.

JOSEPH L. RANDAZZO, Buffalo, N.Y. (Flaherty, Cohen, Grande, Randazzo & Doren P.C. of Counsel) for defendants-appellees Construction Industry Coalition for Economic Recovery of Western New York, Construction Industry Employers Association, Inc., and Bernard Shevlin.

MICHAEL L. BEILWECH, JR., BUffalo, N.Y. (Magavern & Magavern, of Counsel) for defendant-appellee Mechanical Contractors Association of Buffalo & Vicinity.

VICTOR C. SILVERSTEIN, Buffalo, N.Y. (Lippes, Kaminsky, Silverstein, Porter, Mathias, Wexler & Calverley, of Counsel) for defendants-appellees Boiler Makers Association and Louis D. Madia.

PETER H. SCHIFF, Albany N.Y. Deputy Solicitor General (Robert Abrams, Attorney General of the State of New York, William J. Kogan, Assistant Solicitor General, John Q. Driscoll, Assistant Attorney General), for defendant-appellee New York State Department of Transportation.

ALTIMARI, Circuit Judge:

Walter L. Jones, Pro se ("Jones"), and the Walter L. Jones Development Corporation, ("the Corporation"), appeal from an order of the United States District Court for the Western District of New York, John T. Elfvin, Judge, dismissing appellants' complaint pursuant to Fed. R. Civ. P. 37 (b) (2) (C). Judge Elfvin dismissed the action because of Jones' persistent refusal, in the face of warnings by the court and the Corporation's attorney, to answer any questions at a duly scheduled deposition. We conclude that in light of Jones' willful attempt to obstruct the course of discovery in this action, the district court was fully justified in imposing the harsh sanction of dismissal.

BACKGROUND

This lawsuit is no newcomer to our courts. Jones commenced the action in 1980; since then, Jones' litigation has been the subject of several opinions, publishesd and unpublished, in both the district and circuit courts. When the case was dismissed, however, discovery had barely begun.

Appellant Jones is the president and sole shareholder of the Corporation, a minority-owned construction business located in Buffalo, New York. Jones filed the first version of the complaint in this action on November 24, 1980, alleging that the defendants' failure to award

certain construction contracts to the Corporation violated federal constitutional and statutory law. A more detailed background statement is provided in an early district opinion in this case, see Jones v. Niagara Frontier Transportation Authority, 524 F Supp. 233 (W.D.N.Y. 1981).

Jones filed the original complaint Pro se, on behalf of himself and the Corporation; the Corporation initially was unrepresented by counsel. On April 17, 1981, after several defendants had moved to dismiss the action on various grounds, the district court dismssed Jones' individual claims, holding that Jones did not have standing to challenge alleged injuries to the Corporation. The court also held that the Corporation would have to retain counsel in order to proceed with the action. Jones subsequently attempted to circumvent this ruling by assigning the Corporation's claims to himself; the district court held, however, that a corporation could not assign its claims to a lay person in order for the lay person to prosecute the corporation's claims. This court affirmed that ruling, see Jones v. Niagara Frontier Transportation Authority, 722 F 2d 20 (2d Cir. 1983).

In July 1981, the attorney which the Corporation had then retained sought leave to amend the complaint. The amended complaint, filed in August 1981, ommitted several of the defendants previously joined in the action. On October

ders due to lack of appellate jurisdiction. We awarded defendants double costs and attorneys' fees, and warned the plaintiff that "the further filing of meritless legal papers subjects them to the risk of severe sanctions,"

While the aforementioned appeal ws still pending before this court, a deposition was scheduled for March 2, 1987, at which time Jones was to apepar and testify as president of the Corporation. Jones failed to appear for the scheduled deposition, taking the position that his appeal to this court had the efect of staying all discovery. Counsel for the Corporaton subsequently conceded that discovery was not stayed and that there was no reason to postpone the deposition. Accordingly, the Magistrate issued an order on March 9, 1987, requiring Jones to appear and give deposition testimony commencing on March 16, 1987.

Both Jones and the Corporation's counsel appeared on March 16, but Jones refused to answer any questions put to by opposing counsel. Instead, he read from a prepared statement, the gist of which was that all orders entered in this action since the dismissal of his individual claims were unconstitutional, and that he would not answer questions until his individual rights were vindicated. Presumably, such vindication would include reinstating Jones as a party. The Corporation's attorney stated that Jones' refusal to respond was not in accordance with coun-

sel's advice.

After Jones initially refused to respond, defense counsel telephoned Magistrate Maxwell for advice on how to proceed. The Magistrate advised Jones that he was obligated to answer all questions unless there was a legitimate claim of privilege. He also warned Jones that defendants might move for sanctions, "because of what [he] construe[d] to be [Jones'] deliberate attempts to delay and frustrate the discovery in this case." The deposition was adjourned briefly to give Jones an opportunity to confer with counsel. Following the adjournment, Jones still refused to answer any questions, and the proceeding was terminated.

Defendants moved to dismiss the complaint, pursuant to Fed. R. Civ. P. 37, based on Jones' willful refusal to give deposition testimony. On April 15, 1987, Judge Elfvin granted defendants' motion and dismissed the action.

DISCUSSION

Rule 37 (b) (2) (C) provides that if an officer of a party refuses to obey an order compelling discovery, the court may impose sanctions against that individual, including, where appropriate, dismssal of the action. A district court's choice of sanction should not be dissturbed on appeal unless that choice constitutes an abuse

of discretion. See National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 642 (1976) (per curiam).

Dismissal under Rule 37 is an extreme sanction, to be imposed only in extreme circumstances. See Israel Alrcraft Industries, Ltd. v. Stanford Precision, 559 F 2d 203, 208 (2d Cir. 1977). "The sanction of dismissal shoud not be imposed underRule 37 unless the failure to comply with a pretrial production order is due to 'willfulness, bad faith, or any fault' of the deponent." Salahuddin v. Harris, 782 F 2d 1127, 1132, @d Cir. 1986) (quoting Societe International Pour Participation Industrielles et Commerciales v. Rogers, 357 U.S. 197, 212 (1958). Nevertheless, this court observed in Cine Forty-Second Street Theatre Corp. v. Allied Artists Pictures Corp., 602 F 2d 1062, 1068 (2d Cir. 1979), that "in this day of burgeoning, costly and protracted litigation courts should not shrink from imposing harsh sanctions where . . . they are clearly warranted.

We conclude that the district court did not abuse its discretion in this case by electing to impose the harsh sanction of dismissal. Walter Jones, as president of the plaintiff corporation, refused willfully and repeatedly to answer any questions at a court-ordered deposition. although Jones initially took the position that discovery was stayed pending his appeal from

8, 1981, the district court issued an order to show cause why the claims against those defendants should not be dismised. On the return date, no one appeared on behalf of the Corporation, and therefore on November 2, 1981, the court ordered the action dismissed as to those defendants, with prejudice. Judge Elfvin concluded that the decision to delete certain defendants was a strategic one on the part of the plaintiff's counsel.

Over the years, Jones made numerous attempts to have himself reinstated as a party, all of them unsucessful. He also sought unsucessfully to reinstate the defendants who had been dismssed from the action. The passing years were witness to a great flurry of paper-work -- including several amended complaints, district court rulings and appeals --but not much progress. In addition, several different attorneys have represented the Corporation.

In October 1985, Judge Elfvin referred the case to Magistrate Maxwell for pre-trial proceedings. The Magistrate ruled on various motions and in January 1987 issued a scheduling order requiring all parties wishing to file deposition notices to do so by February 2, 1987. Both Jones and the Corporation appealed from the Magistrate's rulings, first to the district court and then to this court.

On March 24, 1987, this court dismissed the Corporation's appeals from the Magistrate's or-

certain of the Magistrate's orders, the district court made it clear that such was not the case. Moreover, the Corporation's attorney conceded that discovery had not been stayed and that the court-ordered deposition could proceed.

Jones willfully chose, however, to ignore the advice of counsel, as well as earnest warnings by the Magistrate regarding the possibility of sanctions. In response to opposing counsel's first question at the deposition, Jones stated in part:

> [M]y answers to any and all questions are that I am not at liberty or free to answer any questions, at this time, based upon the grounds that it would be further violative of my individual constitutional rights to due process, which are caused by the Court's -- thats appealed -- prior and present decisions being entered in a manner inconsistent with due process of law, which precludes and restrains my individual participation in this meritorious civil rights case, which is now being challenged, on appeal, as being manditorily void, including the Order that directed this instant proceeding.

Jones' obstructionist conduct, moreover,

occurred in the context of a lawsuit which had been pending for nearly seven years with almost no progress being made. It appeared to everyone else involved in the litigation, including the court, that Jones was concerned more with making frivolous motions whan with moving the case forward. Instead of proceeding with the Corporation's claims, Jones made numerous attempts to have the district court reconsider its ruling with respect to Jones' lack of standing to press his individual claims. Jones also tried repeatedly to bring several defendants back into the action after the Corporation's counsel had made a strategic decision to drop them. Jones sought to amend the complaint over a dozen times (and was granted permission to do so on several occasions) and persisted in filing appeals from non-appealable orders.

Against this background, Jones' refusal to comply with the discovery order was simply the last straw. As the district court observed:

> At a time when all others are working towards the resolution of the issues on the merits, Mr. Jones, the sole shareholder of the plaintiff corporation, has determined (thus far sucessfully) that the merits will not be reached and decided until he has coerced this court into reinstating him as a party plaintif . . .

Mr. Jones' refusal to obey the orders directing him to testify was knowing, intentional and willful.

In light of all the circumstances and history of this case, see Link v. Wabash Railroad Co., 370 U.S. 626, 634-35 (1962), the district court was completely justified in choosing the sanction of dismissal. See Cine Forty-Second Street, 602 F. 2d at 1068-69 (Oakes, J., concurring) (suggesting that dismssal is a particularly appropriate sanction where client rather than counsel is responsible for conduct leading to dismissal).

In addition to appealing from the Rule 37 dismissal, appellants also challenge several interlocutory rulings made by the district court during the pendency of this action. Most notable among these is the court's April 1981 order dismissing Jones' individual claims on the ground that he did not have standing to assert them. Since then, to the detriment of the Corporation, Jones has enpended an inordinate amount of energy in an attempt to overturn or circumvent that ruling. Indeed Jones' refusal to comply with the discovery order was premised on his belief that he need not do so until he was reinstated as a party.

The district court held that Jones did not have standing as an individual because the claims asserted all involved injuries to the Corpora-

tion, stemming from its failure to obtain the construction contracts at issue. There were no allegations that defendants had taken any acions against Jones in his individual capacity.

A shareholder -- even the sole shareholder -- does not have standing to assert claims alleging wrongs to the corporation. See e.g. Sherman v. British Lyland Motors, Ltd., 601 F, 2d 429, 439-40 (9th cir. 1979); Sterngass v. Bowman, 563 F. Supp. 456, 458-59 (S.D.N.Y.), aff'd mem., 742 F. 2d 1440 (2d Cir. 1983), cert denied, 469 U.S. 823 (1984); see also Warth v. Seldin, 422 U.S. 490, 499 (1975) (plaintiff "cannot rest his claim to relief on the legal rights or interests of third parties"). Even though Jones may have felt personally aggrieved by defendants' failure to award contracts to the Corporation, and even though he may have faced the risk of financial loss as a result, the district court correctly dismissed Jones' individual claims for lack of standing. We have examined the appellants' remaining contentions regarding the interlocutory orders and find them all to be without merit.

Finally, appellants have filed a motion in this court, seeking permission yet again to amend the complaint. In light of our disposition of this appeal, the motion to amend is hereby denied as moot.

The judgement of the district court is affirmed.

APPENDIX B

DISTRICT COURT'S OPINION AND JUDGEMENT

DATED APRIL 15 and 16, 1987

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES and WALTER L. JONES DEVELOPMENT CORPORATION, INC.,

Plaintiffs,

-vs-

CIV-NO-1075E

MEMORANDUM AND ORDER

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA); JAMES H. WOLFORD; GOERGE L. WESSEL; RICHARD C. SOUTHARD; JOHN F. DOWNING; WILLIAM G. GISEL; JOHN F. KOPCZYNSKI; WILLIAM H. WENDEL; JACK BAYER; CHESTER R. HARDT; GEORGE J. TRIMPER; ALFONSE V. BELLANCA; TIMOTHY J. TOOHEY; ERNESTINE R. GREEN; JACOB F. SCHOELLKOPF V; JAMED E. KELLY; KENNETH G. KNIGHT; WILLIAM BULOW; ROBERT D. GIOIA; RONALD J. ANTHONY; RICHARD F. GALLAGHER; THEODORE BECK; URBAN MASS TRANSPORTATION ADMINISTRATION (UMTA); HIRAM J. WALKER; BROCK ADAMS; ROBERT PARTRICELLI; JOSE CAMALLONGA; RICHARD S. PAGE; HAROLD B. WILLIAMS; WESLEY A. PLUMMER; WILHEMENIA BURKE; ARTUR B. TEELE; ANDREW LEWIS (Officials and Administrators); NEAL CAVANAUGH; and SIEGFRIED CONSTRUCTION CO., INC.; JOHN J. SANDERS and SLATTERLY ASSOCIATES, INC.; HERBERT F. DARLING and HERBERT F. DARLING, INC.; IRVING FRANCIS and JOHN W. COWPER CO., INC.; S.H. BARTHOLOMEW and FRUIN/COLNON/ TOM TRAYLOR/TRAYLOR BROS.; WILLIAM STERLING and ONYX CONSTRUCTION & EQUIPMENT CO.; JOHN H. FUHERMANN and CONSTRUCTION INDUSTRY EMPLOYERS ASSOCIATION; DONALD J. BLAIR and BUILDING TRADES COUNCIL OF BUFFALO AND VICINITY; RONALD M. FINO and LABORERS LOCAL UNION NO. 210; JOSEPH COLERN and MICHAEL FITZPATRICK; IRON WORKERS LOCAL UNION NO. 6; LEONARD S. CONIGLIO and CEMENT MASONS LOCAL UNION NO. 511; HERMAN F. BODEWES and CARPENTERS DISTRICT

COUNCIL; LEO HOPKINS and OPERATING ENGINEERS LOCAL UNION NO. 17, 17A, 17B; LAWRENCE J. STROH and NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION; PLUMBING CONTRACTORS ASSOCIATION OF ERIE COUNTY, N.Y., INC.;ALBERT ELIA BUILDING COMPANY, INC.,; LAWRENCE A. ELIA (Officer); S & M CONSTRUCTORS, INC.; john DenBESTE; ELTON T. GRANT; AFL-CIO COUNCIL and GEORGE WESSSEL; CONSTRUCTION INDUSTRY COALITION FOR ECONOMIC RECOVERY WESTERN NEW YORK (Coalition) and BERNARD J. SHEVLIR, DONALD J. BLAIR and ROBERT M. LOGAN; MECHANICAL CONTRACTORS ASSOCIATION OF BUFFALO & VICINITY, INC.; (Association) and MARSHALL DAVIS (Official); BOILER MAKERS EMPLOYERS ASSOCIATION OF BUFFALO & VICINITY, LOUIS D. MADIA (Official); GREATER BUFFALO SHEET METAL & ROOFING ASSOCIATION, PAUL GILBERT (Official); ASBESTOS WORKERS LOCAL UNION NO. 4, JACK KELLEHER (Official); BOILER MAKERS LOCAL UNION NO. 7, JOHN BARRY JARZYSNKI (Official); ELEVATOR CONSTRUCTORS LOCAL NO. 14, DONALD M. WINKLE (Official); GLAZERS LOCAL UNION NO. 660, JAMES J. COYLE; LATHERS LOCAL UNION NO.32, FRANK A. SCIABARRASI (Official); PAINTERS DISTRICT COUNCIL NO. 4, JIM V. GRIFFO (Official); PLASTERERS LOCAL UNION NO. 9, SAMUEL F. ANTONIO (Official); ROOFERS LOCAL UNION NO. 74, ANGELO PAGANO (Official); SHEET METAL WORKERS LOCAL UNION NO. 71, GEORGE J. CUDDIHY (Official); STEAMFITTERS LOCAL UNION NO. 395. DONALD J. BLAIR (Official); TILE, MARBLE & TERRAZZO WORKERS HELPERS LOCAL UNION NO. 8, DANIEL J. MECCA (Official); TRUCK DRIVRS LOCAL UNION NP. 449, ERWIN M. WALKER (Official); and PLUMBERS LOCAL UNION NO. 36, LARRY CONNELLY (Official).

Defendants.

Those unfamiliar with the tortuous trail that has lead us to the present juncture are

invited to peruse the 400-plus items that comprise the public file in this action wherein a minority contracting firm alleges that it has been deprived of its right to participate in the building of the Light Rail Rapid Transit in Buffalo, N.Y.; no background will be repeated here.

Walter L. Jones, president of the plaintiff corporation and originally a party to this suit, contrary to the dire warnings of the Magistrate[1] and the United States Court of Appeals for the Second Circuit,[2] has persisted in ignoring the advice of the plaintiffs counsel

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1 Jones deposition at 34-36. [Exhibit 14 to Defendants' Motion to Dismiss]

2 Order of the United States Court of Appeals for the Second Circuit filed March 24, 1987 at ¶4. [Exhibit 12 to Plaintiff's Notice and Cross Motion]

3 Jones Deposition at 12.

and in defying the explicit orders of the Magistrate that he respond to the questions posed to him during what was to have been his deposition. The only justification for Mr. Jones' actions is his persistent belief that this Court's Order of April 17, 81 dismissing him from the action for lack of standing deprived him of certain constitutional rights without due process of law. He has determined that "the Order, and all of the Order, including the Order compelling this particular proceeding, is void, as a matter of law." Jones Deposition at 13. Jones further decreed that it was not

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4 A written order filed March 9, 1987 reads in pertinent part"

"ORDERED, that Walter L. Jones Development Corporation, will appear by its president, Walter L. Jones, and give deposition testimony on March 16, 1987 beginning at 9:30 a.m. each day***." [Exhibit 12 to Defendants' Motion to Dismiss]

On March 16th after it was apparant that Jones would not respond as ordered, a telephone conference was initiated with the Magistrate at which time he directed lengthy remarks to Jones, admonishing him to cooperate. It is clear from the record that his instructions were devoid of ambiguity. Jones deposition at 32-35.

appropriate to have a deposition. Instead, "[i]t now has come to the point that we must have a hearing to decide [his rights as an individual and as the sole stockholder]. Id., at 12-13.

At a time when all others are working towards the resolution of the issues on the merits, Mr. Jones, the sole shareholder of the plaintiff corporation, has determined (thus far sucessfully) that the merits will not be reached and decided until he has coerced this Court into reinstating him as a party plaintiff.[5]

Dismissal of an action for failure to comply with an express discovery order is a harsh measure, but one that is not without precedent.[6] Mr. Jones's refusal to obey the

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5 Paragraph 10 of Jones's Supplemental Affidvit filed April 13, 1987 reflects this conviction:

"Simply stated, I have not, and will not, under any circumstances, abandon my efforts and my learning to restore my individual civil and constitutional rights in this action, which I have been illegally stripped, denied and deprived of, since April 22, 1981, as part of the conspiracy to deny me, as a lay person, of my rights to seek individual redress in this action, Pro se."

6 Cine Forty-Second St. Theatre v. Allied Artists, 602 F.2d 1062, 1066-1068 (2d Cir. 1979).

orders directing him to testify was knowing, intentional and willful. Furthermore, where as here it is the decision of the client and not of its counsel, to defy a court order there is even more reason to impose the ultimate sanction.[7]

Accordingly, it is hereby ORDERED that the defendants' motion to dismiss this action pursuant to Fed.R.Civ.P. rule 37 is granted.

Dated: Buffalo, N.Y.
April 15, 1987

JOHN T. ELFVIN
U. S. D. J.

---

7 Id. at 1068-1069 (Oakes, J., concurring).

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES, and
WALTER L. JONES DEVELOPMENT CORP.,

Plaintiffs

V

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA) et al.,

Defendants.

JUDGEMENT IN A CIVIL

CASE NUMBER CIV 80-10

☐ Jury Verdict. This action came before the Cou for a trial by jury. The isues have been tri and the jury has rendered its verdict

☒ Decision by Court. this case came to XXXX hearing befor this Court. the issues have been XXX heard and a decision has been rendereed.

IT IS ORDERED AND ADJUDGED

That the defendants' motion to dismiss this action pursuant to Fed.R. Civ. P. Rule 37 is granted.

April 17 1987
Date

Edward P. Gueth, Jr.
Clerk Edward P. Gueth, Jr.

(BY) Deputy Clerk

BEST A

APPENDIX C

COURT OF APPEAL'S DENIAL OF PETITION
FOR REHEARING
DATED JANUARY 29, 1981

AILABLE COPY

SECOND CIRCUIT

At a stated Term of the UnitedStates Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-ninth day of January One thousand nine hundred and eighty-eight.

PRESENT:

HON. J. EDWARD LUMBARD,
HON. AMALYA L. KEARSE,
HON. FRANK X. ALTIMARI

Circuit Judges,

UNITED STATES COURT O
FILED
JAN 29 1988
ELAINE B. GOLDSMIT
SECOND CIRCUIT

WALTER L. JONES AND WALTER L. JONES DEVELOPMENT CORPORATION, INC.,
Plaintiffs-Appellants
-V-

NIAGARA FRONTIER TRANSPORTATION AUTHORITY(NFTA), et al
Defendants-Appellees.

Docket N
87-7502

A petition for a rehearing having been filed herein by Appellants - WALTER L. JONES and WALTER L. JONES DEVELOPMENT CORPORATION, INC.

Upon consideration thereof, it is

Order that said petition be and it hereby is DENIED.

Elaine B. Goldsmith
Clerk

BEST AVAIL

APPENDIX D

DISTRICT COURT ORDERS
AND INTERLOCUTORY OPINIONS
AND JUDGEMENT
ISSUED APRIL 17, 1981, OCTOBER 8, 1981,
NOVEMBER 5. 1981, FEBRUARY 12, 1985,
OCTOBER 11 1985, AND OCTOBER 15, 1985

ABLE COPY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Walter L. Jones & 1

Civ-80-1075E

-vs-

Niagara Frontier Transportation
Authority et al

SIR: Take note that Judgement & ORDER was duly granted and entered in the above entitled action, on the 22nd day of April 1981

DATED: Buffalo New York
April 22, 1981

John K. Adams, Clerk
U.S. District Court
602 U.S. Courthouse
Buffalo, New York 14202

TO: Walter L. Jones Pro se
Hodgson, Russ, Andrews, Woods & Goodyear
Stuart M. Pohl, Esq.
Robert E. Pearman, Esq.
Douglas S. Cream, Esq.
Joseph L. Randazzo, Esq.
James W. Gresens, Esq.
United States Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT COURT OF NEW YORK

CIV-80-1075E

WALTER L. JONES and WALTER L. JONES DEVELOPMENT CORPORATION, INC.,
Plaintiffs,

vs.

MEMORANDUM and ORDER

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, (NFTA), URBAN MASS TRANSPORTATION ADMINISTRATION,(UMTA), NEW YORK STATE DEPARTMENT OF TRANS-PORTATION (NYS DOT), SIEGFRIED CONSTRUCTION CO.,INC., SLATTERY ASSOCIATES, INC., HERBERT F. DARLING, INC., JOHN W. COWPER CO., INC., FRUIN COLNON/TRAYLOR BROTHERS/& ONYX EQUIPMENT COMPANY, NELSON PETERS ASSOCIATES, CONSTRUCTION INDUSTRY EMPLOYERS ASSOCIATION, BUILDING TRADES COUNCIL OF BUFFALO AND VICINITY, LABORERS LOCAL UNION NO. 210, IRONWORKERS LOCAL UNION NO. 6, CEMENT MASONS' LOCAL NO. 511, CARPENTERS DISTRICT COUNCIL, OPERATING ENGINEERS LOCAL UNION NO. 17, 17A, 17B, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, PLUMBING CONTRACTORS OF ERIE COUNTY, N.Y., INC.,

Defendants.

This action involves the construction of the City of Buffalo's Light Rail Rapid Transit System ("the LRRT") which has been underway since 1979. Plaintiffs in this action are Walter L. Jones Development Corporation, Inc., a small minority non-union prime contracting firm located in Buffalo, and Walter L. Jones, owner and president of the Walter L. Jones Development Corporation,

Inc. (hereinafter "the Corporation"). Defendants are the Niagara Frontier Transportation Authority ("the NFTA"), the Urban Mass Transportation Administration ("the UMTA"), New York's Department of Transportation ("the DOT"), a minority consultant firm, several contracting and construction firms, and several unions and employer associations.[1] In essence, plaintiffs allege that defendants acted jointly and individually to deprive the Corporation of its rights, as a minority prime contracting firm, to participate in the building of the LRRT.

The issue now before the court is plaintiffs' motion for a preliminary injunction to halt all current construction and to permit the Corporation to carry the remaining work. Defendants oppose plaintiffs' motion for basically three reasons: that Jones has no standing as an individual to press the allegations in the Amended Complaint; that the Corporation cannot be

---

[1] Plaintiffs' original Complaint was against only the NFTA, the UMTA, and the DOT. I granted plaintiffs permission to amend their Complaint when the parties appeared before me February 9, 1981. The other fifteen defendants were added in plaintiffs' Amended Complaint.

represented by Jones, who is not an attorney; and that plaintiffs have failed to pass the test required for preliminary relief. I find that all three arguments urged by defendants are valid.

Standing of Walter L. Jones

Article III of the Constitution of the United States requires that a party must have a sufficient stake in the controversy in order to pursue his or her or its claims in federal court. Sierra Club v. Morton, 405 U.S. 727 (1977). To meet this constitutional standing test, a plaintiff must show that he or she or it has sustained some direct injury as a result of the defendants' alleged conduct. Massachusetts v. Mellon, 262 U.S. 447, 488 (1923); Goldberg v. Weinberger, 546 F. 2d 477, 479 n.3 (2nd Cir. 1976), cert. denied, 431 U.S. 937 (1977); Brashich v. Port Authority of New York, 484 F. Supp. 697, 701-03 (S.D.N.Y. 1979), aff'd,628 F. 2d 1344 (2d Cir. 1980)

Jones has failed entirely to demonstrate the requisite injury to establish his constitutional standing to pursue this case as a plaintiff.

Although this lawsuit has been pending for only a short length of time, plaintiffs have submitted voluminous and detailed papers. A thorough review of them reveals that, notwithstanding the many factual averments, there is no claim or indication that any of the defendants acted against Jones in his individual capacity. According to plaintiffs' own pleadings, all of defendants' purported actions were taken against the Corporation, not against Jones personally. Similiarly, the alleged injuries--to wit, financial losses resultant from the Corporation's nonparticipation in the construction project and public defamation[2] --were inflicted solely upon the Corporation, not upon Jones as an individual.

It certainly understandable that as owner and president of the Corporation, Jones feels personally angered and aggrieved by defendants' allegedly discriminatory conspiracy to deprive "his" Corporation of a construction contract. Such

---

[2] Public defamation of the Corporation was alleged an an injury by plaintiffs at oral argument March 2, 1981.

feelings, however, do not translate into the constitutional standing he needs to be entitled to sue, on behalf of either himself or the Corporation, these defendants for their alleged actions. See, Warth v. Sendin, 422 U.S. 490, 508-10 (1975); Chenkin v. Bellevue Hospital Center, New York City Health and Hospitals Corporation, 479 F. Supp. 207, 216 (S.D.N.Y. 1979).

Accordingly, any claim asserted by Jones as an individual must be dismissed at this time.

Representation of the Corporation

When plaintiffs initiated this lawsuit Jones represented both himself (as a pro se plaintiff) and the Corporation. As an affirmative defense, defendants have asserted that the Corporation was improperly before the court because a corporate entity must be represented by an attorney to maintain a federal lawsuit.

At oral argument March 2, 1981, plaintiffs told the court that the Corporation would henceforth be represented by attorney John L. Hargrave, Esq. Such a statement would ostensibly render the inadequate corporate representation defense moot (at least from that point forward).

Subsequent to oral argument, however, additional papers have been filed by Plaintiffs, some of which have been signed only by "Walter L. Jones, Attorney Pro se for Walter L. Jones, personally, and as owner of Walter L. Jones Development Corporation, Inc." See, for example, Plaintiffs' Response and Request for Clarification to Answers Submitted by Defendant NFTA, to Plaintiffs [sic] First Interrogatories, filed March 25, 1981. For this reason, it is necessary to confront the issue posed by defendants.

Under federal law, a corporation can be represented in court only by an attorney. The theory behind this principle is that, as an artificially created entity, a corporation can act only through its agents. For purposes of a lawsuit, the proper agent must be a properly admitted attorney of record. S.E.C. v. Research Automation Corp., 585 F. 2d 31, 33, n.2 (2d Cir. 1978); Phillips v. Tobin, 548 F. 2d 408, 411 (2d Cir. 1976); Securities & Exch. Com'n. v. Research Automation Corp., 521 F. 2d 585, 589 (2d Cir. 1975); Jackson v. Statler Foundation, 496 F. 2d 623, 626 (2d Cir. 1974) ("[W]e note that

if appellant's foundation is incorporated it may only appear with counsel."); [3] Shapiro, Bernstein & Co., Inc., v. Continental Record Co., Inc., 386 F 2d 426, 427 (2d Cir. 1967) (per curium reversal) ("[I]t is settled law that a corporation cannot appear other than by its attorney").

For this reason, the Corporation can be represented only by properly admitted counsel authorized to do so by the Corporation. Mr. Hargrave would be such if the Corporation has retained him and if he acts as an attorney for such corporate client. [4]

---

[3] This controlling ruling is neither cited nor discussed in Matter of Holliday's Tax Service, Inc., 417 F. Supp. 182 (E.D.N.Y. 1976), wherein qualified permission for a small closely-held corporation to proceed in bankruptcy represented by its sole shareholder who was not an attorney was granted. The decision was affirmed on appeal sub nom. Holliday's Tax Services Inc., v. Hauptman, 614 F. 2d 1287 (2d Cir. 1979) but without written opinion and expressly without precedential value. It has been characterized as unique and polemical. In re Las Colinas Dev. Corp., 585 F. 2d 7, 11 (1st Cir. 1978).

[4] Plaintiffs are well-advised to take note of the requirements of Rule 11, Federal Rules of Civil Procedure.

Preliminary Injunction Test

Defendants uniformly insist that plaintiffs have failed to meet the stringent preconditions for preliminary relief. A preliminary injunction is a drastic and extraordinary remedy and should not be granted absent a clear and convincing showing by the moving party. Yakus v. United States, 321 U.S. 414 (1944). In this circuit, a party must demonstrate:

> "possible irreparable injury and either (1) probable sucess on the merits or (2) sufficiently serious questions goint to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting preliminary relief."

Caulfield v. Board of Education of the City of New York, 583 F. 2d 605, 610 (2d Cir. 1978) (emphasis in original). I am satisfied that the Corporation has not met its heavy burden.

A. Irreparable Harm

Plaintiffs assert that the Corporation's irreparable injuries amount to a continuing financial loss of approximately $120,000.00 per day. According to plaintiffs, this figure is based on the various contract bids the Corporation unsuccessfully submitted.

As the UMTA accurately observes, the Corporation's alleged monetary loss is merely speculative and is unsubstantiated. In light of the many factual contentions disputed by the parties, plaintiffs have plainly failed to demonstrate that, even if defendants acted wrongly against the Corporation in some respects, it would have been entitled to all or any of the contested contracts.

Futhermore, by plaintiffs' own assertions, the alleged irreparable injuries are in the nature of monetary damages for past contracts already awarded to other contractors. Plaintiffs have failed to make any showing that money damages would be a sufficient remedy should the Corporation ultimately prevail. Such failure alone is a proper basis for denial of injunctive relief. Thompson v. New York Central Railroad Company, 361 F. 2d 137, 145-46 (2d Cir. 1966); Copylease Corporation of America v. Memorax Corporation, 397 F. Supp. 853, 855 (S.D.N.Y. 1975).

B. Likelihood of Sucess on the Merits

Plaintiffs have likewise failed to show that the Corporation is likely to prevail in its

lawsuit. As the NFTA points out, plaintiffs have pleaded a great number of facts against a great number of defendants. Many of these facts are convincingly controverted in answers and affidavits submitted by defendants.

In this case, the facts as alleged by plaintiffs are integral to their case. If events did not occur the way they claim, there is no reason to presume that they would be entitled to any relief. The existence of significant factual conflicts in this case raises sufficient doubt about the Corporation's likelihood of success that preliminary relief should not be granted. American Visuals Corporation v. Holland, 219 F. 2d 223 (2d Cir. 1955); Eastin-Phelan Corporation v. Hal Roach Studios, 350 F. Supp. 1328, 1332 (S.D.N.Y. 1977); see, Wright & Miller, Federal Practice & Procedure §2948 at 455-56 (1973).

C. Balance of Hardships

The alternative to the "likelihood of success on the merits" test requires, inter alia, a showing that the balance of hardships tips decidedly toward the party requesting preliminary

relief. At oral argument, defendants demonstrated, again convincingly, that the balance of hardships falls overwhelmingly upon them (and the public) rather than upon the Corporation.

At oral argument March 2, 1981, defendants one by one described the considerable extent to which the contracts have already been carried out, the amount of work which has already been finished, and the large number of construction workers and other employees who would be severely and adversely affected by any injunction to halt the work presently underway. If defendants eventually prevail, the additional costs resulting from the court-imposed delay would be ummeasurably burdensome.

Plaintiffs reply that no delay need arise if the court were to permit them to replace the current workforce with a workforce of their own. Plaintiffs have made no showing, however, that they are in a position to do so with the immediacy demanded by the circumstances. To do so would be impossible for all practical purposes. It is therefore obvious that a preliminary injunction in favor of the Corporation would wreak

much more harm than good on the LRRT, which is well on its way to completion.

It is therefore hereby

ORDERED that the cause and causes of action asserted in this lawsuit by Walter L. Jones on his individual behalf are dismissed; and it is further hereby

ORDERED that plaintiff Walter L. Jones Development Corporation, Inc., may be represented in this lawsuit only by properly admitted counsel;[5] any pleadings and other papers and arguments submitted by the Corporation after this Order is entered must be in accordance with this Order; and it is further hereby

ORDERED that the Corporation's motion for a preliminary injunction is denied.

_____
U.S.D.J.

Dated: Buffalo, N.Y.
April 17, 1981

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5 Whether the Amended Complaint sets forth a tenable cause of action is not now decided.

BEST AVA

JUDGEMENT ON DECISION BY THE COURT

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

Walter L. Jones
Walter L. Jones development Corp.,

CIVIL ACTION FILE NO. 80-1075E

vs.

JUDGEMENT

Niagara Frontier Transportation
Authority, et al.

Ths action came on for trial (hearing) before the Court, Honorable John T. Elfvin, United States District judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the cause and causes of action asserted in this lawsuit by Walter L. Jones on his individual behalf are dismissed.

Dated at Buffalo, New York this 22nd day of April, 1981.

Clerk of Court
John K. Adams

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES,
WALTER L. JONES DEVELOPMENT CORP.

-V- CIVIL 80-1075E

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, et al,

SIR: take notice that an ORDER was duly granted and entered in the above action, on the 8th day of Oct. 1981

DATED: Buffalo, New York

October 8, 1981

John K. Adams, Clerk
U.S. District Court
604 U.S. Courthouse
Buffalo, New York 14202

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES, WALTER L. JONES DEVELOPMENT CORPORATION,

Plaintiffs,

-vs-

CIV-80-1075E

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, et al,

Defendants.

ORDER

Plaintiff corporation having filed an Amended Complaint August 7, 1981 in which the following individuals and entities, originally and in prior complaints named as parties defendant in this action, are not named as parties defendants:

New York State Department of Transportation,
Victor Scaravilli and S & M McHugh Kenny,
Oscar Rayford & Universal Supply Equipment & Construction Co.,
John M. Fuhrmann & Construction Industry Employers Association,
Edward Cole & Tresco Distributions,
Carmen A. Gallo & Amiga Construction,
Emanuel Humes & Humes Industrial Electric,
Emanuel Humes & Humes Contracting Co.,
Joseph Myles & Trash land Trucking,
Robert Chester & Keystone Steel,
Robert L. Pitts & P & S Supply,
James Lyles & L & W Concrete,
DeVilus Gray & Aftco International Trading Company,
Paul Harrison & Downtown Dump Truck Service,
Dean Williams & Native American Construction Co.,
William Taborn & Nelson Peters, Associates,
Donald J. Blair & building Trades Council of Buffalo & Vicinity,

Ronald M. Fino, & Laborers Local Union No. 210
Joseph F. Colern & Michael Fitzpatrick, Iron Workers Local Union No. 6,
Leonard S. Coniglio & Cement Mason's Local Union No. 511,
Herman F. Bodewes & Carpenters District Council
Leo Hopkins & Operating Engineers Local Union Nos. 17, 17A, 17B,
Lawrence J. Stroh & National Electrical Contractors Association,
Plumbing Contractors Association of Erie County N.Y., Inc.,

it is hereby

ORDERED that Plaintiff corporation show cause October 19, 1981 at 9:00 in Part II of this Court why these individuals and entities should not be dropped from this lawsuit pursuant to Fed. R. Civ. P. rule 21 and this action be deemed dismissed as to each of them.

JOHN T. ELFVIN
United States District Judge

Dated: Buffalo, N.Y.
October 8, 1981

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Walter L. Jones Development Corp.

-vs- Civil 80-1075E

Niagara Frontier Transportation Authority, et al

SIR: Take notice that an ORDER was duly granted and entered in the above entitled action, on the 3rd day of November, 1981

DATED: Buffalo, New York

November 3, 1981

John K. Adams, Clerk
U.S. District Court
604 U.S. Courthouse
Buffalo, New York 14202

TO: Charles L. Davis, Esq.
Brown, Kelly, Turner, Hassett & Leach
Damon, Morey, Sawyer & Moot
John P. Bartolomei, Esq.
Timothy J. Toohey, Esq.
Douglas S. Cream, Asst. Atty General
John Jenny, Esq.
C. Donald O'Connor, AUSA
E. Joseph Giroux, Esq.
Hodgson, Russ, Andrews, Woods, & Goodyear
Stuart M. Pohl, Esq.
Joseph L. Randazzo, Esq.
James W. Gresens, Esq.
John E. Runals, Esq.
Roy W. King, Esq.
Robert Pearman, Esq

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES, WALTER L. JONES DEVELOPMENT CORPORATION

Plaintiffs,

vs

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, et al,

Defendants.

ORDER

Civ-80-1075

This matter having come on to be heard on October 19, 1981, upon this Court's own Order to Show Cause dated October 8, 1981, why the following parties defendants:

New York State Department of Transportation
Victor Scaravilli and S & M/McHugh/Kenny
Oscar Rayford & Universal Supply Equipment & Construction Co.
John M. Fuhrmann & Construction Industry Employers Association
Edward Cole & Tresco Distributions
Carmen A. Gallo & Amiga Construction
Emanual Humes & Humes Industrial Electric
Emanual Humes & Humes Contracting Co.
Joseph Myles & trash Land Trucking
Robert Chester & Keystone Steel
Robert L. Pitts & P & S Supply
James Lyles & L & W Concrete
DeVilus Gray & Aftco International Trading Company
Paul Harrison & Downtown Dump Truck Service
Dean Williams & Native America Construction Co.
William Taborn & Nelson, Peters Associates
Donald J. Blair & building Trades Council of Buffalo & Vicinity
Ronald M. Fino & Laborers Local Union No. 210
Joseph F. Colern & Michael Fitzpatrick, Iron

Workers Local Union No. 6
Leonard S. Coniglio & Cement Mason's Local Union No. 511
Herman F. Bodewes & Carpenters District Council
Leo Hopkins & Operating Engineers Local Union Nos. 17, 17A, 17B
Lawrence J. Stroh & National Electrical Contractors Association
Plumbing Contractors Association of Erie County, N.Y., Inc.

should not be dropped pursuant to Fed. R. Civ. R. 21, because the above-named parties defendants are not named in the "Second Amended Complaint" dated August 14, 1981, presently before this Court and no one appearing for plaintiffs in opposition to this motion and inasmuch as the above-named parties defendants had filed motions to dismiss plaintiffs' prior Amended and Supplemental Complaint dated March 30, 1981, it is hereby

ORDERED, that the following named parties defendants,

New York State Department of Transportation
Victor Scaravilli and S & M/McHugh/Kenny
Oscar Rayford & Universal Supply Equipment & Construction Co.
John M. Fuhrmann & Construction Industry Employers Association
Edward Cole & Tresco Distributions
Carmen A. Gallo & Amiga Construction
Emanual Humes & Humes Industrial Electric
Emanual Humes & Humes Contracting Co.
Joseph Myles & trash Land Trucking
Robert Chester & Keystone Steel

Robert L. Pitts & P & S Supply
James Lyles & L & W Concrete
DeVilus Gray & Aftco International Trading Company
Paul Harrison & Downtown Dump Truck Service
Dean Williams & Native America Construction Co.
William Taborn & Nelson, Peters Associates
Donald J. Blair & building Trades Council of Buffalo & Vicinity
Ronald M. Fino & Laborers Local Union No. 210
Joseph F. Colern & Michael Fitzpatrick, Iron Workers Local Union No. 6
Leonard S. Coniglio & Cement Mason's Local Union No. 511
Herman F. Bodewes & Carpenters District Council
Leo Hopkins & Operating Engineers Local Union Nos. 17, 17A, 17B
Lawrence J. Stroh & National Electrical Contractors Association
Plumbing Contractors Association of Erie County, N.Y., Inc.

are dropped without leave to further amend and with prejudice as to the above-named parties defendants.

John T. Elfvin
United States District Court

Dated: Buffalo, New York
November 2, 1981

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES,

Plaintiff,

-v- CIVIL 80-1075E

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, et al.,

Defendants.

SIR/MADAM: Take notice of an ORDER, of which the within is a copy, duly granted in the within entitled action on the 12th day of February, and entered in the office of the Clerk of the United States District Court, Western District of New York, on the 12th day of February.

Dated: Buffalo, New York
Feb. 12, 1985

JOHN K. ADAMS, CLERK
U.S. District Court
Western District of New York

U.S. Courthouse
Buffalo, New York 14202

cc: Walter L. Jones
Barbara M. Sims, Esq.
John Hargrave, Esq.
John Randazzo, Esq.
C. Donald O'Connor, AUSA
Brown, Kelly, Turner, Hassett, Leach
Hodgson, Russ, Andrews, Woods, Goodyear
James Gresens, Esq.
Timothy Toohey, Esq.
E. Joseph Giroux, Jr., Esq.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES, and
WALTER L. JONES DEVELOPMENT CORPORATION, INC.,

Plaintiffs,

-vs-

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA): JAMES H. WOLFORD; GEORGE L. WESSEL; RICHARD C. SOUTHARD; JOHN F. DOWNING; WILLIAM G. GISEL; JOHN F. KOPCZYNSKI; WILLIAM H. WENDEL; TED BECK; CHESTER R. HARDT; GEORGE J. TRIMPER; ALFONSO V. BELLANCA; JACK BAYER; WILLIAM E. STRAUB; JACOB F. SCHOELLKOPF V; JAMES E. KELLY; KENNETH G. KNIGHT; WILLIAM BULOW; URBAN MASS TRANSPORTATION ADMINISTRATION (UMTA); BROCK ADAMS; JOSE CAMALLONGA; RICHARD S. PAGE; HAROLD B. WILLIAMS; NEAL CAVANOUGH and SIEGFRIED CONSTRUCTION FO., INC.,; HERBERT F. DARLING and HERBERT F. DARLING, INC.; IRVING FRANCIS and JOHN W. COWPER CO. INC.; S.H. BARTHOLOMEW and FRUIN COLNON/ TOM TRAYLOR/TRAYLOR BROS.; WILLIAM STERLING and ONYX CONSTRUCTION & EQUIPMENT CO.,

Defendants.

CIV-80-1075E

MEMORANDUM AND ORDER

Considerable confusion has arisen regarding the procedural posture of this civil rights case[1] due, in part to a plethora of motions and proposed pleadings filed by plaintiff and to the coexist - ence of another case, Walter L. Jones, et al

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1 Further background information is supplied in previous decisions of the Court, partcularly Jones v. Niagara Frontier Transportation Authority, 524 F. Supp. 233 (W.D. N.Y. 1981).

v. Siegfried Construction Co., Inc., et al, CIV-83-86E, having substantial similarity to the instant lawsuit. Such other action has now been dismissed and plaintiff's recent motions to amend the instant Complaint so as to bring into this case virtually identical versions of claims which have been filed in CIV-83-86E and which had earlier been dismissed in the instant case have been rendered moot. Several other matters may also be disposed of at this time in an effort to allow the case to proceed in more orderly fashion.

Plaintiff has moved for reconsideration of this Court's November 2, 1981 Order herein dismissing the claims as to a number of defendants.[2]

Plaintiff also has persistently sought by various devices to reintroduce Walter L. Jones as an individual plaintiff in this case. Indeed it is the not so subtle behind the scenes manipulation of the case by Mr. Jones -- whose legal

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2 Plaintiff brought a similar motion October 29, 1982 which this Court considered but did not decide given its disposition of other pending matters by a Memorandum and Order filed December 7, 1982.

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acumen does not match his energy in pursuing these matters -- that has resulted in much of the delay and confusion that has occurred to date. As this Court previously noted in its April 22, 1981 Memorandum and Order dismissing those causes of action asserted in this lawsuit by Mr. Jones on his individual behalf and ordering that the Corporation be represented by properly admitted counsel:

> "It is certainly understandable that as owner and president of the Corporation, Jones feels personally angered and aggrieved by defendants' allegedly discriminatory conspiracy to deprive 'his' Corporation of a construction contract. Such feelings, however, do not translate into the constitutional standing he needs to be entitled to sue, on behalf of either himself or the Corporation, these defendants for their alleged actions. See Worth v. Seldin, 422 U.S. 490, 508-510 (1975); Chenkin v. Bellevue Hospital Center, New York City Health & Hospitals Corporation, 479 F. Supp. 207, 216 (S.D.N.Y. 1979)." Id at 4.

This Court in effect reaffirmed its conclusion in a somewhat different context by its Memorandum and Order of December 6, 1982, which was affirmed on appeal, 722 F. 2d 20 (2nd Cir. 1983). To the extent plaintiff's various motions can be

deemed a motion to reconsider this Court's April 22, 1981 decision, such matter has been amply considered and reconsidered and needs no further comment.

A brief review of events leading to the November 2, 1981 Order is appropriate. Plaintiff , having previously filed several amended complaints, moved July 1, 1981 for permission to file yet another. Its motion was granted July 13, 1981; the new amended pleading was filed August 7th and was followed by a "Second Amended Complaint" filed August 20, 1981. Because a number of individuals and entities named as parties defendant in the original and intervening complaints were no longer named in the August 7th and August 20th pleadings, this Court on October 8, 1981 issued an order that plaintiff show cause why such defendants should not be dropped from the lawsuit pursuant to Fed. R. Civ. P. rule 21. There having been no appearance or other opposition on behalf of plaintiff on the motion's return date and the defendants in question having filed motions to dismiss plaintiff's prior Amended and Supplemental Complaint

dated March 30, 1981, this Court dismissed plaintiff's claims as to such defendants. Plaintiff now asserts that the dropping of those defendents from the August 7th and August 20th complaints was an unauthorized act by plaintiff's then attorney and that such action was taken over Mr. Jones's objections. Plaintiff apparently acknowledges that the dropping of the defendants in question represented a strategic determination by its attorney that such defendants were not material to the present action (see Plaintiff's Memorandum of November 14, 1984 at p. 9). Plaintiff merely asserts that Mr. Jones did not agree with that decision, ibid., and that such defendants are in fact material. There is no question that plaintiff's said attorney had received the Order to Show Cause. Inasmuch as the dismissal of those certain defendants from this matter had resulted from a considered judgement on the part of competent counsel for plaintiff, there is no reason to vacate the November 2, 1981 Order.

Also presently outstanding are motions by several other defendnts to dismiss the August 20,

1981 complaint (which is the currently viable complaint in this action). Because of the procedural confusion in this case and the possibility that such motions may have become stale given intervening circumstances, such motions will be deemed dismissed without prejudice and all defendants in this action shall have twenty (20) days to respond to or move against the August 20, 1981 complaint. Such motion or motions may incorporate previous memorandua and filings, providing specific reference is made thereto.

Finally plaintiff has moved to compel answers to its supplemental interrogatories. Defendants shall have thirty (30) days from the entry of this Memorandum and Order to respond to such interrogatories as may have been served upon them.

Accordingly, it is hereby

ORDERED that plaintiff's motions to vacate orders of this Court issued November 2, 1981 and April 22, 1981 are denied; and it is hereby further

ORDERED that defendants' motions to dismiss the August 20, 1981 complaint are denied without

prejudice and that each defendant shall have twenty (20) days from the entry of this Memorandum and Order to answer or move against said complaint; and it is hereby further

ORDERED that plaintiff's motion to compel answers to its interrogatories is dismissed without prejudice to such motion being brought within thirty (30) days of the entry of this Memorandum and Order.

Dated: Buffalo, N. Y.
February 12, 1985

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U.S.D.J.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES & WALTER L. JONES DEVELOPMENT CORPORATION, INC.
Plaintiff,

CIVIL 80-1075E

-v-

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, et al.,
Defendants.

SIR/MADAM: Take notice of an ORDER, which the within is a copy, duly granted in the within entitled action on the 15th day of October, and entered in the Office of the Clerk of the United States District Court, Western District of New York, on the 16th day of October.

Dated: Buffalo, New York

October 16, 1985

JOHN K. ADAMS, CLERK
United States District Court
Western District oc New York
U.S. Courthouse
Buffalo, New York 14202

cc: See Attached List

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES DEVELOPMENT CORPORATION,
Plaintiff,

-v- CIVIL 80-1075E

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, et. al,
Defendant.

SIR/MADAM: Take notice of an ORDER, of which the within is a copy, duly granted in the within entitled action on the 11th day of October, and entered in the Office of the Clerk of the United States District Court, Western District of New York, on the 11th day of October.

Dated: Buffalo, New York
October 11, 1985

JOHN K. ADAMS, CLERK
United States District Court
Western District of New York
U. S. Courthouse
Buffalo, New York 14202

cc: See Attached List

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES and
WALTER L. JONES DEVELOPMENT CORPORATION, INC.,
Plaintiffs,

-vs-

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA): JAMES H. WOLFORD; GEORGE L. WESSEL; RICHARD C. SOUTHARD; JOHN F. DOWNING; WILLIAM G. GISEL; JOHN F. KOPCZYNSKI; WILLIAM H. WENDEL; TED BECK; CHESTER R. HARDT; GEORGE J. TRIMPER; ALFONSO V. BELLANCA; JACK BAYER; WILLIAM E. STRAUB; JACOB F. SCHOELLKOPF V; JAMES E. KELLY; KENNETH G. KNIGHT; WILLIAM BULOW; URBAN MASS TRANSPORTATION ADMINISTRATION (UMTA); BROCK ADAMS; JOSE CAMALLONGA; RICHARD S. PAGE; HAROLD B. WILLIAMS; NEAL CAVANOUGH and SIEGFRIED CONSTRUCTION FO., INC.,; HERBERT F. DARLING and HERBERT F. DARLING, INC.; IRVING FRANCIS and JOHN W. COWPER CO. INC.; S.H. BARTHOLOMEW and FRUIN COLNON/ TOM TRAYLOR/TRAYLOR BROS.; WILLIAM STERLING and ONYX CONSTRUCTION & EQUIPMENT CO.,

CIV-80-1075E

MEMORANDUM and ORDER

Walter L. Jones pro se, a former plaintiff in this civil rights action has moved for my disqualification pursuant to 28 U.S.C. §§455(a) and 455(b)(1) on grounds of this Court's alleged bias and prejudice towards him. Although Jones, as a non-party to this action, technically does not have the right to bring such a motion, it has been decided to treat it as a proper motion given the gravity of the allegations.

The motion is centered on Jones' displeasure with certain rulings in this matter. As stated in the October 3, 1985 opposition affidavit from the Assistant United States Attorney representing defendant Urban Mass Transit Administration in this matter, the motion is "devoid of any factual basis for concluding that [the Court] has demonstrated personal bias against Walter L. Jones at any stage of these proceedings." Jones's displeasure stems from the decision to dismiss certain defendants from the case and to dismiss Jones's individual claims for lack of standing. The reasons for these rulings can be found in this Court's decisions of April 22, 1981, November 3, 1981 and February 12, 1985 and are further being considered in the contxt of pending motions for certification pursuant to Fed. R. Civ. P. rule 54(b) as to which a separate opinion shall issue shortly. Adverse rulings in and of themselves are not a sufficient basis for disqualification. See In Re International Business Machines Corp., 618 F. 2d 923 (2d Cir. 1980). Jones mistakenly reads into certain decisions -- and the subsequent adherence

to such -- a personal animus. Part of the problem my be Jones's lack of experience with proper legal procedures. For example, he appears to believe that this Court's decision not to permit certain interlocutory appeals in some improper fashion cuts short his individual rights of access to the judicial process. However, while such certainly has the effect of delaying ultimate disposition insofar as Jones is concerned, they do not deprive him of ultimate assess to the appellate court. It is the rare case in which all parties to a lawsuit will be satisfied with a court's decisions and those of which Jones complains in this case have unquestionably been facially severe [1] in their effect on Jones.

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[1] The dismissal as to certain defendants has an obviously severe effect because he and his corporation are precluded from recoveries from them. This result was intended and flows from a sanction imposed upon the plaintiff corporation due to procedural default. See this Court's Order of November 3, 1981 and Memorandum and Order of February 12, 1985. The putting out of this case of Jones as an individual works no harm at all upon him. He is the 100% owner and executive of the corporation and the latter was the bidder for the work in question. Jones is a Black and claims racial discrimination but his corporation makes and pursue the identical claim. Jones was not a bidder and he was not directly damaged in any way. If his corporation was damaged so was Jones, but only indirectly and derivatively. If the corporation prevails in this litigation, Jones will not benefit directly but he will thereby and thereafter be the sole owner and executive of a financially enhanced corporate entity.

Nonetheless such decisions were based on an honest appraisal of the legal principles involved. They will be subject to review at an appropriate time as they should be. They do not reflect any past or present bias or prejudice towards Jones. Jones has not presented any facts -- other than the adverse results -- on which to base the present motion to disqualify. No such facts exist. The mere fact of adverse decisions creates no appearance of impropriety. Accordingly,

Jones's motion to disqualify is hereby ORDERED denied.

Dated: Buffalo, N.Y.
October 11, 1985

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U.S.D.J.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES and WALTER L. JONES DEVELOPMENT CORPORATION, INC.,

Plaintiffs,

-v-

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA): JAMES H. WOLFORD; GEORGE L. WESSEL; RICHARD C. SOUTHARD; JOHN F. DOWNING; WILLIAM G. GISEL; JOHN F. KOPCZYNSKI; WILLIAM H. WENDEL; TED BECK; CHESTER R. HARDT; GEORGE J. TRIMPER; ALFONSO V. BELLANCA; JACK BAYER; WILLIAM E. STRAUB; JACOB F. SCHOELLKOPF V; JAMES E. KELLY; KENNETH G. KNIGHT; WILLIAM BULOW; URBAN MASS TRANSPORTATION ADMINISTRATION (UMTA); BROCK ADAMS; JOSE CAMALLONGA; RICHARD S. PAGE; HAROLD B. WILLIAMS; NEAL CAVANOUGH and SIEGFRIED CONSTRUCTION FO., INC.,; HERBERT F. DARLING and HERBERT F. DARLING, INC.; IRVING FRANCIS and JOHN W. COWPER CO. INC.; S.H. BARTHOLOMEW and FRUIN COLNON/ TOM TRAYLOR/TRAYLOR BROS.; WILLIAM STERLING and ONYX CONSTRUCTION & EQUIPMENT CO.,

Defendants.

CIV-80-1075E

MEMORANDUM AND ORDER

Presently pending in this involved civil rights action are numerous motions by plaintiff[1] and by various defendants which shall be treated seriatim.

A preliminary word about the Amended Complaint

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[1] Notwithstanding the caption, Walter L. Jones Development Corporation, Inc., is the only plaintiff in this case — as shall be examined infra.

is in order. The plaintiff's lengthy history of amended pleadings are most recently the subject of decisions by this Court dated May 2, 1985 and May 29, 1985. The viable complaint in this case continues to be, as stated in the May 29 Order, the Proposed Amended and Supplemental Civil Rights Complaint attached as Exhibit 2 to the April 25, 1985 Affidavit of Barbara M. Sims, Esq. The plaintiff heatedly has asserted that the proper complaint should be a so-called Amended Complaint dated May 10, 1985, purportedly filed and served in accordance with this Court's oral permission, given off the record in court April 1, 1985, to file a corrected version of the proposed April 25th pleading -- such corrections to be limited to spelling and punctuation changes and such grammatical changes as would not bear upon the substance of the pleading. The May 10th pleading was deemed a nullity by the May 29th Order because it was not in compliance with this Court's instructions. The plaintiff asserts -- inaccurately -- that the May 10th pleading contained so substantive changes from the version

as to which leave to file and serve had been granted. Even a casual comparison of the two documents shows this not to be true. The point here is not to humiliate the plaintiff by preventing correction of spelling and comparable errors but to force the plaintiff -- given its pleading history -- to take an appropriate degree of responsibility for the documents it submits. Accordingly, further changes shall not be permitted at this time with the single exception that the clarifying substitution of "the Grantee's" for "its" in Paragraph 41 of the April 25th pleading shall be deemed to have been made. Such action, of course, shall not require further pleading by defendants inasmuch as the substance of the Amended Complaint will remain unchanged.

The plaintiff also has moved, pursuant to Fed. R. Civ. P. rule 54(b), for a certification of two previous orders of this Court for the purpose of taking an immediate appeal. Specifically the plaintiff seeks immediate review of this Court's decision of April 22, 1981 as reiterated in a February 12, 1985 Mamorandum and Order dismissing Walter L. Jones's individual claims,

and of this Court's November 2, 1981 Order, also restated in the February 12th Memorandum and Order, dismissing the plaintiff's claims as to a number of defendants. In fact this Court did certify the entry of final judgement as to the dismissal of Jones's individual claims by an order signed April 10, 1985. As appeal was taken but later withdrawn in light of the requirement set forth in Ansam Associates, Ins. v. Cola Petroleum, Ltd. ("Ansam"), 760 F. 2d 442, 445 (1985), that a district court provide a "brief, reasoned explanation" as part of a rule 54(b) certification.

Further consideration convinces that the plaintiff's motions for rule 54(b) certification should be denied. Ansam reemphasizes the importance of avoiding piecemeal appeals and the consequent infrequency of situations where rule 54(b) certification is appropriate.

> A district court should grant certification only when there exists 'some danger of hardship or injustice through delay which should be alleviated by immediate appeal.' Campbell v. Westmoreland Farm, Inc., 403 F. 2d 939, 942 (2d Cir. 1968)." Ansam, supra, at 445.

No such showing has been made in this case. The plaintiff's alternative motions to vacate the April 22, 1981, November 3, 1981 and February 12, 1985 decisions similarly are denied. The April 10, 1985 Order of Certification will be vacated.

This Court's May 2, 1985 Order granting leave to file and serve the April 25th Proposed Amended Complaint was made without prejudice to the renewal or submission by defendants of appropriate motions. Given the stricture of Fed. R. Civ. P. rule 15(a) that leave to amend "shall be freely given when justice so requires", it is the normal practice of this Court to permit a plaintiff upon motion to file and serve an amended complaint except for the rare case in which the defendant makes a strong showing of prejudice due to the fact of amendment in and of itself, as opposed to an attack on the substance of such. Indeed this Court will not normally consider the underlying proposed pleading until such time as it has been filed and served, leaving to the parties the burden of attacking or defending it as appropriate. Such

motions are now before me in this case.

Certain "defendants"[2] urge dismissal of Jones's individual claims based upon the April 22, 1981 and February 12, 1985 rulings. This Court has explained in those decisions its conclusion that Jones does not have individual standing to sue in this case and has not been made aware of any reason to change its conclusion.[3] Accordingly,

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[2] Such movants, not all of whom are named in the present complaint, are: Donald J. Blair and Building Trades Council of Buffalo and Vicinity; Ronald M. Fino and Laborers Local Union No. 210; Joseph F. Colern, and Michael Fitzpatrick and Ironworkers Local Union No. 6; Leonard S. Coniglio and Cement Masons Local Union No. 511; Loe Hopkins and Operating Engineers Local Union No. 17, 17a and 17b; Donald J. Blair as Official of Construction Industry Coalition for Economic Recovery Western New York; Asbestos Workers Local Union No. 4 and Jack Kellerher;Boiler Makers Local Union No. 7 and John Barry Jarzynski; Bricklayers Local Union No 45 and James Joseph McGovern; Electrical Workers Local Union No. 41 and Melbourne H. Rich; Elevator Constructors Local No. 14 and Donald M. Winkle; Glaziers Local Union No. 660 and James J. Coyle; Painters District Council No. 4 and Jim V. Griffo; Plasterers Local Union No. 9 and Samuel F. Antonio; Roofers Local Union No. 74 and Angelo Pagnano; Sheet Metal Workers Local Union No. 71 and George J. Cuddihy; Steamfitters Local Union No. 395 and Donald J. Blair; Tile, Marble & Terrazzo Workers Helpers Local Union No. 8 and Daniel J. Mecca; and Construction Employers Association, Inc., John M. Fuhrmann (Officer).

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[3] In a letter to this Court dated September 18, 1985 and copied to thie defendants, Jones reiterated his belief that he should be a party to this action and submits, presumably as support for that position xerograhiic copies of Black Brothers Combined, Etc. v.

defendants' motions will be granted. Jones is not a party to this case and further submissions by him or attempts by him or others to circumvent that decision will be of no effect.[4]

Certain of the defendants[5] also assert that

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3 Cont.
City of Richmond, 386 F. Supp. 147 (E.D.Va. 1974), Minority Emp., Etc. v. Tenn. Dept. of Employ. Sec., 573 F. Supp. 1346 (M.D.Tenn. 1983), and Howard Sec. Serv. v. Johns Hopkins Hospital, 516 F. Supp. 508 (D.Md. 1981). These cases do not, however, support Jones's position on individual standing and address, rather, corporate and organizational rights of action under the civil rights statues. The generic fact that in certain instances corporations or individuals or both may have rights of action under the civil rights statutes does not mean that Jones has standing under the circumstances of this case. As has been more adequately exlained in previous decisions of this Court, there are often drawbacks as well as advantages to the act of incorporation but, having availed himself of such legal status, Jones may not so easily dismiss or shed it.

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4 This Court is aware that Jones inevetably will play a role in this case in his capacity as President and sole stockholder of the corporate plaintiff and trusts that its attorney will exercise judgement to see that this relatively narrow testimonial function is not abused so that no further restrictions will be required.

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5 Movants are: Donald J. Blair and Building Trades Council of Buffalo and Vicinity, Ronald Fino and Laborers Local Union No. 210; Joseph Colern and Michael Fitzpatrick and Ironworkers Local Union No. 6; Leonard S.Coniglio and Cement Masons Local Union No. 511; Leo Hopkins and Operating Engineers Local Union Nos.17, 17a and 17b; Construction Industry Employers Association, Inc., John M. Fuhrmann (Officer); Carpenters District Council, Herman F. Bodewes; Lathers Local Union No. 32, Frank A Sciabarrisi; National Electrical Contractors Association, Western New

the Amended Complaint should be dismissed as to them because claims as to them had been "dropped without leave to further amend and with prejudice" by this Court's November 2, 1981 Order and as restated by the February 12, 1985 Memorandum and Order. The events giving rise to such result have been set forth in the previous decisions. The Plaintiff's premise for reconsideration is the same now as it was then -- that its then attorney of record acted in some fashion ultra vires and contrary to instructions and that it is unfair to penalize it for the attorney's purported misconduct. There is no question that the dismissal of certain defendants without

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5 Cont.
York Chapter; Plumbing Contractors Association of Erie County, New York, Inc.; and S&M Constructors, Inc. and their officers.

Defendant S&M Constructors, Inc., ("S&M:) points out that the present Amended Complaint names two of its officers — John Den Beste and Elton Grant — as opposed to the previously named officer — Victor Scaravelli. As such defendant asserts, the allegations of the complaint are not directed against such officers as individuals. The plaintiff has not asserted, and this Court cannot find, any reason why any dismissal as to S&M should not preclude the claims against Den Beste and Grant and the motion will be decided on that basis.

Similarly, the attorney for Carpenters District Council asserts — and this Court accepts — tjat Lathers Local Union No. 32 was merged into the Carpenters District Council of Buffalo & Vicinity in September 1979 so that any ruling as to Carpenters District Council and Herman Bodewes would also apply to Lathers Local union No. 32 and Frank A. Sciabarrasi.

adjudicating the merits as to them is in some sense a harsh result. Nonetheless, as explained in the previous decisions, it is amply justified in this case. Moreover, the plaintiff's assertion that it was unaware of this Court's decision to dismiss such defendants and consequently waited nearly a year to challenge such decision strains credulity in light of its and Jones's history of close involvement in the case. Nor is this a situation in which failure to keep abreast of activities of counsel and actions by a court might be explained by such factors as the pro se status of a litigant, lack of education or inability to grasp these particular legal issues and consequences.

Defendant Niagara Frontier Transportation Authority (NFTA) has moved to dismiss or for summary judgement asserting that the present action is barred by res judicata and that the Amended Complaint fails to state a valid claim against it.

The res judicata argument is based upon an October 16, 1979 Order of Judge Curtin in Walter L. Jones Development Corporation v. Niagara Fron-

tier Transit Authority, CIV-79-546C (such defendant inexplicably has not cited this case and has not provided a copy of such Order although my efforts have since located it). Such order dismissed the compl.int therein due to the corporate plaintiff's failure to appear at a scheduled oral argument of the defendant's motion to dismiss on substantive grounds. The NFTA currently asserts that such order has a claim preclusive effect but is incorrect as to the extent of that preclusion. Although not expressly so stated, the October 16th Order was clearly entered pursuant to Fed. R. Civ. P. rule 14(b) and rule 30A of the Local Rules of Procedure of this Court. As such, and plaintiff's citation of state authorities notwithstanding, the issue here is one of federal law. See Spangler v. C.I.R., 323 F. 2d 913 (2d Cir 1963). I is clear that an involuntary dismissal for failure to prosecute under rule 41(b) operates as an adjudication upon the merits "although the substantive issues of the case are never reached." Saylor v. Lindsley, 391 F. 2d 965, 968 (2d Cir. 1968). See Costello v. United States,

365 U.S. 265, 285 (1961); Browning Debenture Holders' Com. v. Dasa Corp., 605 F. 2d 35 (2d Cir. 1978); Harrelson v. United States, 613 F. 2d 114 (5th Cir. 1980). Precisely because substantive issues are never reached such adjudication is given res judicata effect but not necessary collateral estoppel effect. Accordingly, while the plaintiff is precluded from relitigating the causes of action presented in CIV-79-546C claims which could not have been brought prior to the October 16th Order were not extinquished. See Lawlor v. National Screen Service, 349 U.S. 322 (1955). It is clear that most of the claims against the NFTA in the Amended Complaint in this case, while involving similar issues to those presented in CIV-79-564C, allege "new" facts. Arguably there are some gray areas as to which claims in the present case sould have been brought in the previous action. The NFTA, however, which has the burden on this motion, has not compared the two complaints in any detailed analytical fashion. Accordingly, the NFTA's motion to dismiss will be granted only as to such causes of action explicitly set forth

in CIV-79-546C and of course only insofar as such pertain to the NFTA.

The NFTA has also moved to dismiss the action pursuant to Fed. R. Civ. P. rule 12 (b) (6) for failure to state a claim. In support of such motion, the NFTA relies on the May 4, 1981 affidavit of John F. Downing previously filed in this case. Downing's affidavit was before this Court when it considered the plaintiff's motion for preliminary injunction. Such motion was denied by Order of August 28, 1981. The rationale for the Order was set forth in a Memorandum filed October 7, 1981. That memorandum touched on, in general sense, a number of troublesome questions in the case, which had not been adequately explored by the parties. Downing's affidavit, which contains essentially no legal analysis and does little more than assert that the NFTA properly exercised its delegated authority, did not serve to clarify the issues in the case at the time it was submitted and is inadequate as a foundation for the present motion. Accordingly, the motion will be denied without prejudice. In the event such defendant

chooses to re-move, adequate legal briefing will be expected.

Defendants Irving Francis and John W. Cowper Co., Inc. ["Francis" and "Cowper"] have moved to dismiss on the dual premises that the plaintiff has failed to state a claim and that it has failed to exhaust administrative remedies. Such defendants' reliance on a memorandum of law dated October 13, 1981 highlights a difficulty posed for this Court by its permissive stance regarding incorporation in present motions of previously submitted documents. Such incorporation has been allowed to help erase the burden imposed on defendants by the frequent amendment of the complaint. When, however, a defendant fails to identify precisely which documents it is relying on - which has been the case with some defendants -- or fails to update stale memoranda which to some extent is the case here,[6] this Court is left in the difficult position of trying to fill gaps.

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[6] The memorandum in question was presented on behalf of these and other defendants (who have since retained different counsel). Moreover, certain contentions in the memorandum with regard to the Complaint in existence

It is particularly important in a case as diffuse as this one -- both in terms of paper generated and certain of the issues -- that counsel for all parties strive to clarify their presentations.

The exhaustion of remedies issues has been addressed in this Court's August 28, 1981 Memorandum and resolved in plaintiff's favor. Although that decision was reached in the context of a motion for a preliminary injunction, the legal reasoning has a more general viability. The defendants have not raised any reasons why such conclusions should be reconsidered. The motion to dismiss for failure to exhaust administrative remedies will be denied.

A motion to dismiss pursuant to Fed. R. Civ. P. rule 12(b) (6) will not be granted unless it appears beyond doubt that a plaintiff can prove no set of facts in support of his claim

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6 Cont.
at that time appear to be mooted by the present Amended Complaint. This Court will not attempt to analyze these discrepencies but will treat the broad assertions raised by the present motion and only, of course, in the context of those defendants presently moving.

which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

> "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test. Moreover it is well established that, in passing on a motion to dismiss, *** the allegations of the complaint should be construed favorably to the pleader." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

There appear to be two broad branches to the defendants' motion to dismiss. On the one hand, as the argument goes, the plaintiff does not have a private right of action as to the defendants. On the other hand, the defendants assert, the plaintiff's allegations are too conclusory to support a cause of action.[7]

The defendants' efforts to ensnare the plaintiff in the web of regulations and executive orders governing Minority Business Enterprises

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[7] The October 13 Memorandum also makes brief reference, without legal support, to a supposed failure by the plaintiff to state a cause of action against Francis in his individual capacity. Assuming that such defendant intends to pursue this argument, a properly briefed motion to that effect will be considered if and when made.

has some logical correlation to the exhaustion of remedies argument but is equally unavailing. Inasmuch as the plaintiff brings this action under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq., among other statutes, and the rules and regulations cited by the defendants being mere means of implementing such, it is unnecessary to delve beyond Title VI itself. And, while such result has been reached in a backhanded fashion, it is clear that a private right of action is available under Title VI. Cannon v. University of Chicago, 441 U.S. 677 (1979). See also, Ass'n Against Discrimination v. City of Bridgeport, 479 F. Supp. 101 (D. Conn. 1979). aff'd in part and vacated in part on other grounds, 647 F. 2d 256 (2d Cir. 1981).

The defendants' argument is much stronger with regard to the lack of fact-pleading in the complaint. Although the broad contours of the plaintiff's case are clear enough, the specific facts -- dates, transactions and so forth -- which would bring these and other defendants into the general picture are barely, if at all,

made clear. Yet there is a generalized factual structure that has been alleged here -- the fact of certain contracts, the fact of government programs concerning such, the fact that many, if not all defendants were involved in the project -- directly or indirectly --, the apparent fact that the plaintiff was low bidder on certain contracts but was not awarded them. While it has been stated that "complaints containing only 'conclusory,' 'vague,' or 'general allegations' of a conspiracy to deprive a person of constitutional rights will be dismissed", Ostrer v. Aronwald, 567 F. 2d 551 (2d Cir. 1977), the same court has held that

> "[a]n action, especially under the Civil Rights Act, should not be dismissed at the pleadings stage unless it appears to a certainty that plaintiffs are entitled to no relief under any state of the facts, which could be proved in support of their claims." Escalera v. New York City Housing Authority, 425 F. 2d 853, 857 (2d Cir.), cert. denied, 400 U.S. 853 (1970).

The present complaint and its allegations against the defendants may well border on what is unacceptable but this Court cannot state with the "certainty" described in Escalera that no set

of facts could be proved to support the plaintiff's claims. Discovery should bring a needed degree of focus to the issues which may well be susceptible of more reasoned analysis through summary judgement motions. Further amendment of the complaint at this stage of the proceedings would appear to be a futile exercise. The defendants' motion will be denied.

The same rationale must govern with respect to the motion of defendant Urban Mass Transportation Administration (UMTA) to dismiss or alternately for summary judgement. UMTA relies in support of its motion on a Memorandum dated October 13, 1981. The gist of such defendant's argument, generally stated, is that consistently with its traditional practice UMTA had largely deferred to the local agency -- defendant Niagara Frontier Transportation Agency (NFTA) --, that the NFTA's determination that the plaintiff was not a responsible bidder on the contracts in question was made in accordance with law and all applicable federal requirements and that to the extent UMTA was called upon to review such decision it did so and agreed with it.

For the reasons previously stated, such defendant's motion to dismiss pursuant to rule 12(b)(6) will be denied. The alternative motion for summary judgement is premature and will be denied with prejudice.

Various motions have ben made by plaintiff to join the United States Department of Justice as an involuntary plaintiff in this case and seeking to disqualify the United States Attorney for the Western District of New York from representing UMTA. Because of the supporting papers for these motions and indeed the motions themselves are submitted by or on behalf of Jones who has no standing in this lawsuit, they will not be considered. Should the plaintiff choose to move on its own behalf for similar relief at a future date such motion will be considered. In the event this Court finds such motion to be frivolous, an award will be made of any costs incurred in defending against it.

Motions by the plaintiff for default and summary judgement were withdrawn at oral argument September 16, 1985 as was defendant Mechanical Contractors Association's motion to set aside

service of process. All requests for fees are ORDERED denied without prejudice. Pending and additional discovery issues will be referred to a United States Magistrate for the Western District of New York. Accordingly, the plaintiff's motions for certification of this Court's dismissal of Jones's individual claims and for certification as to the dismissal of certain defendants by the November 2, 1981 Order are hereby ORDERED denied and the April 10, 1985 Order of certification hereby ORDERED vacated.

The defendants' various motions for summary judgement as to Jones's individual claims and to dismiss as to renewed claims brought against defendants dismissed by the November 2, 1981 Order are hereby ORDERED granted.

Defendant NFTA's motion to dismiss is hereby ORDERED granted as to the causes of action enumerated in CIV-79-546C.

Defendant Francis's and defendant Cowper's and defendant UMTA's motions to dismiss or for summary judgement are hereby ORDERED denied. The above-entitled action is hereby ORDERED referred to the Honorable Edmund F. Maxwell, United States

Magistrate for the Western District of New York who, as authorized by rules 16 and 35 of the Local Rules of Practice of this Court, shall schedule and oversee conferences with the attorneys for the parties for the purposes set out in Fed. R. Civ. P. rule 16 and shall hear and deterrmine all non-dispositive pretrial motions as authorized by 28 U.S.C. §636(b)(1)(A).

Dated: Buffalo, N.Y.
October 15, 1985

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U.S.D.J.

APPENDIX E

CIVIL DOCKET CONTINUATION SHEETS

DOCKET NO. 80-1075E

CIVIL DOCKET CONTINUATION SHEETS

DOCKET NO. 80-1075E

WALTER L. JONES, ET AL, V. NIAGARA FRONT. TRANS. AUTH., ET AL

PROCEEDINGS

PAGES 1 - 7

1980			
Nov	24	1	Filed Complaint
	24		Issued summons and 3 copies
	24		JS-5 made
Dec	5	2	Filed summons and Mar. ret. served on NFTA on 11/25/80
	15	4	Filed Deft. NFTA's answers to the complaint
	16	4	Filed Mar. ret. of S/C served on NYS DOT on 12/5/80; served on UMTA on 12/9/80
	29	5	Filed Pltfs amended complaint
1981			
Jan	5	6	Filed Pltfs interrogatories to Deft.
	5	7	Filed Pltfs affidavit of service on an indiv. or corp.
	6	8	Filed OTSC directing that the petition is denied without prejudice to petitioner' seeking comparable relief by a motion for a preliminary injunction - Elfvin, DJ notices to Walter L. Jones and Robert Pearman
	9	9	Filed Pltfs affidavit of service of Walter L. Jones on an indiv or Corp.
	12	10	Filed Pltfs notice of motion for a preliminary injunction ret. 2/21/81
	14	11	Filed Pltfs affidavit of service of Walter L. Jones (motion for preliminary injunction) served 1/12/81
	16	12	Filed Pltfs amendment of complaint

CIVIL DOCKET CONTINUATION SHEETS (CONT.)

1981		
Jan 19	13	Filed Pltfs additional interrogatories to Deft.
21	14	Filed Defts notice of motion for an order striking and or dismissing the complaint and amended complaint etc. ret. 2/2/81
23	15	Filed Pltfs notice of motion to deny Deft NYS DOT motion ret. 2/2/81
26	16	Filed Pltfs motion for leave to amend complaint and to supplement pleadings
26	17	Filed Pltfs supplementary reply affidavit of Walter L. Jones in support of motion to deny Deft NYS DOT motion
27	18	Filed Pltfs notice of motion to amend the complaint ret. 2/9/81
Feb 5	19	Filed Deft UMTA notice of motion to dismiss Pltfs amended complaint
6	20	Filed Deft NFTA's frst response to Pltfs' first interrogarories
6	21	Filed Deft NFTA's affidavit of Jack Bayer in opposition of request to preliminary injunction
9	22	Filed Pltfs reply affidavit of Walter L. Jones in response to deny the UMTA motion to dismiss Pltfs amended complaint
9	23	Filed Pltfs reply affidavit in support of motion to deny Deft NFTA motion to dismiss Pltf motion for preliminary injunction
9		Court granted Pltfs motion to file an amended complaint provided such filing occurs not later than 2/20/81, sixty days to answer and discovery stayed during that period, motion for preliminary injuction to be considered by Pltf. with consultation of attorneys recorded on tape 148, trak three
20	24	Filed Pltfs notice of motion for a preliminary injunction etc. ret. 3/2/81
20	25	Filed Pltf's amended complaint

Feb 20	26	Filed	Pltf's order directing that service of the amended complaint is to be made by persons other than the U.S. Marshall - Clerk F-233
26	27	Filed	Deft. Construction Industry Employers Assc. notice of motion to dismiss petition for preliminary injunction etc. ret 3/2/81
27	28	Filed	Deft. Carpenters District Council affidavit of E. Joseph Giroux, Jr. in oppostion to petition for preliminary injunction
27	29	Filed	Deft Fruin-colnon/Traylor Bros/L & W Concrete and the John W. Cowper Co's affidavit of James W. Gresens in opposition to Pltf motion for a preliminary injunction
Mar 2	30	Filed	Deft Herbert F. Darling Inc affidavit of Herbert F. Darling Jr.
2		Court	heard argument on Pltfs motion for preliminary injunction, decision reserved. With consent of pltfs the court extended time for new Defts to answer complaint, an additional 30 days. recorded on tape 151, trak 4
3	31	Filed	Deft Construction Industry Employers Assc' affidavit of Joseph L. Randazzo in opposition to petition for preliminary injunction
5	32	Filed	Deft Siegfried Construction Co. Inc., affidavit of personal service of John J. Cooney and affidavit of Joseph A. DiPirro
6	33	Filed	Deft NFTA's second response to Pltfs first interrogatories
9	34	Filed	State Defts notice of motion for an order dismissing the complaint etc. ret. 4/6/81
17	35	Filed	Pltfs notice of motion for leave to supplement and amend complaint ret. 3/30/81
25	36	Filed	Pltfs response and request for clarification to answers submitted by Deft NFTA, to Pltfs first interrogatories

1981			
Mar 26	37	Filed	Deft Carpenters District Council of Buffalo & Vicinity' notice of motion to dismiss ret. 6/1/81
30		Atty.	John Hargrave joins in motion by Walter L. Jones to amend complaint, court grants motion to amend, directs counsel be served with amendment by 4/3/81
Apr 1	38	Filed	Deft. Building Trade Council of Buffalo & Vicinity's notice of motin for an order dismissing the complaint ret. 6/1/81
1	39	Filed	Defts Laborers Local No 210, Ironworkers Local union No 6, Cement Masons; Local Union No.511 and Operating Engineers Local Union Nos 17, 17A and 17B's notice of motion to dismiss the complaint, etc. ret.6/1/81
2	40	Filed	Deft Construction Industry Employers Assc.' answers to the complaint
2	41	Filed	Deft Construction Industry Employers Assc' notice of motion to strike and/or dismiss amended complaint etc. ret. 6/1/81
3	42	Filed	Pltfs Amended & Supplemental Complaint
3	43	Filed	Pltfs Supplemental Interrogatories
13	44	Filed	Mar. ret. of amended and supplemental complaint served on Oscar Rayford & Universal Supply Equip. and Const Co. on 4/6/81
13	45	Filed	Mar. ret of amended and supplemental complaint served on Paul Harrison & Down Town Dump Truck Service on 4/8/81
13	45	Filed	Mar. ret. of amended and supplemental complaint served on Edward Cole & Tresco Distributors on 4/7/81
13	47	Filed	Mar. ret. of amended and supplemental complaint unserved Devilus Gray & Aftco International Trading Co.

1981

Apr 13	48	Filed Mar. ret. of amended and supplemental complaint unserved on Carmen A. Gallo & Amiga Construction
13	49	Filed Mar. ret. of amended and supplemental complaint served on Dean Williams and Native American Construction Co. on 4/7/81
13	50	Filed Mar. ret. of amended and supplemental complaint served on Emanuel Humes & Humes Contracting Co. on 4/7/81
17	51	Filed Mar. ret. of amended S/C and motion & statement of facts served on Fruin Colnon Corp/Traylor Bros/Onyx Equipment Co. on 3/3/81; served on the U.S. Atty. by certified mail to the attorney general on 3/2/81; served on Nelson, Peters Associates on 3/9/81
17	52	Filed Mar. ret. of supplemental interrogatories and amended and supplemental complaint served on John Sanders and Slattery Associates and Emanuel Humes and Humes Industrial Electrical on 4/8/81; served on Joseph Myles and Trashland Trucking on 4/9/81
22	53	Filed memorandum and order directing that the cause of action by Walter L. Jones on his individual behalf are dismissed; Pltf. Walter L. Jones Development Corp. may be represented in this lawsuit only by properly admitted counsel, any pleadings and other papers submitted by the Corp, after this order must be in accordance with this order; the Corp's motion for preliminary injunction is denied, - Elfvin, DJ. notice & copies to all counsel F-235
22	54	Filed judgement on decision by the court - clerk. notice & copies to all counsel F-235
22	55	Filed Deft Construction Inductry Employers Assc answers, response and objections to Pltf's supplementary interrogatories
22	56	filed Deft Construction Industry Employers Assc answer to amended & supplemental complaint

CIVIL DOCKET CONTINUATION SHEETS (CONT.)

1981			
Apr	23	57	Filed Defts Oscar Rayford and Universal Equipment Supply and Const Co.' answer to the complaint (ltr sent)
	23	58	filed Defts Oscar Rayford and Universal Supply, Equipment and Const Fo. motion for a protective order etc. ret. 4/27/81
	23	59	filed mar ret. of amended & supplemental complaint served Victor Scaravilli and S & M McHugh Kenny on 4/8/81 and James Lyles and L & W Concrete on 4/9/81
	24	60	Filed Defts notice of motion & motion to stay discovery ret 5/4/81
	24	61	Filed summons and mar ret of amended & supp. complaint served Robert L. Pitts and P & S Supply on 4/20/81 and via cert. mail to Aftco International Trading Co. on 4/20/81
	24	62	Filed Defts Nelson, Peters & Associates, Inc. answer to the complaint
	29	63	Filed Defts Lawrence J. Stroh & National Electrical Contractors Association's notice of motion & motion to dismiss etc. ret. 6/22/81
	29	64	Filed Deft Plumbing contractors Association of Erie County, N.Y., Inc. notice of motion & motion to dismiss etc-ret. 6/22/81
	30	65	Filed Dept. of Transportation's notice of motion & affidavit to dismiss ret. 6/22/81
May	1	**	Filed Pltf's application to stay order, pending appeal
	1	66	Filed Notice of appeal of Pltf Walter L. Jones (cy. mailed to Messrs. Pearman, Cream, Randazzo, Gresens, Jenny, Pohl, and Schmit, to Hodgson, Russ, etc. and to clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Jones) - see entry of 5/11/81 for addtl service

1981

May 1	67	Filed	Defts S.H. Bartholomew, Fruin-Colnon Corp., Tom Traylor, Traylor Bros., Inc., James Lyles, L & W Concrete, Inc., Fruin-Colnon/Traylor Bros./ L & W Conrete, a joint venture, Irving Francis, The John W. Cowper Co. Inc.' notice of motion for an order dismissing the Pltfs' amended and supplemental complaint etc. ret. 6/22/81
4	68	Filed	Pltfs affidavit if John L. Hargrave in opposition to motion for a protective order, denying disclosure by Deft
4	69	Filed	Pltfs reply affidavit of Walter L Jones Development Corp. Inc. and motion to compel Deft. answer interrogatories
4	70	Filed	Deft Nelson, Peters Assc's notice of motion for an order dismissing the supplemental complaint etc. ret 6/22/81
4	71	filed	Defts Cornelius Cavanaugh, Siegfried Construction Co., John Sanders and Slattery Assc., Inc. notice of motion for an order dismissing the amended and supplemental complaint etc. ret. 6/22/81
4	72	Filed	Deft Herbert F. Darling Inc' notice of motion for an order dismissing the Pltf's amended supplemental complaint etc. ret. 6/22/81
4	73	Filed	Deft Building Trades Council of Buffalo & Vicinity's answers and objections to supplementary interrogatories of Defts
4	74	Filed	Defts Laborers Local 210, Iron Workers Local 6, Operating Engineers Locals 17, 17A, 17B and Cement Masons Local 511's notice of motion for an order dismissing Pltfs amended and supplemental complaint ret. 6/22/81
5	75	Filed	Deft Building Trades Council of Buffalo & Vicinity's notice of motion for an order dismissing the Pltf's amended and supplemental complaint ret. 6/22/81

1981

May	4	76	Filed Defts Laborers Local 210, Operating Engineers Locals 17, 17A, 17B, Iron Workers Local 6 and Cement Masons Local 511's answers and objections to Pltfs supplemental interrogatories of Defts
	5	77	Filed Defts Paul Harrison and Downtown Dump Truck Service' notice of motion for an order dismissing Pltfs complaint ret. 5/18/81 attached to attorney's affidavit of John P. Bartolomei
	4		Court hears argument on motion to stay all discovery, will make a decision by 5/11/81, Pltf to submit information to the court by 5/8/82 re necessary discovery to oppose motions to dismiss. Recorder on tapr 157 trak one
	5	78	Filed Deft NFTA's notice of motion to dismiss etc. ret 6/22/81
	5	79	Filed Deft NFTA's affidavit of Roger W. Aaberg of proof of service of answer
	7	80	Filed Defts Herman Bodewes and Carpenters District Council of Buffalo & Vicinity's notice of motion to dismiss ret. 6/22/81
	6	81	Filed Order directing that Pltf's application for a stay is denied. - Elfvin, DJ. Notice & copies to all counsel F236
	7	82	Filed Deft UMTA's notice of motion and motion to dismiss Pltfs' amended and supplementary complaint order alternatively for summary judgement ret. 6/22/81
	8	83	Filed Pltfs supplementary interrogatories to universal Equip. et al
	8	84	Filed Pltfs supplementary interrogatories to Buffalo Down Town Dump Truck, et al
	7	85	Filed cy Form F - transcript ordered
	11		Copy Of Pltfs notice of appeal served on Messrs. O'Connor, Giroux and Turner

CIVIL DOCKET CONTINUATION SHEETS (CONT.)

1981

May 13	86	Filed	Defts Oscar Rayford and Universal Supply's notice of motion to dismiss the Pltf's amended and supplemental complaint ret. 6/22/81
12	87	Filed	Mar. ret. of amended & supplemental complaint served on Keystone Steel on 4/21/81
14	88	Filed	Memorandum and order sirecting that Defts motion for a blanket protective order is denied without prejudice. Parties shall meet with the Magistrate on or before 5/25/81 to resolve all disputes concerning the discovery needed by Pltf to respond adequately to Defts' motions and supporting affidavits etc. - Elfvin, DJ. Notice & copies to all counsel F-236
15	89	Filed	Defts Robert Pitts and P & S Supply Co's notice of motion to dismiss Pltfs amended and supplemental complaint etc. ret 6/22/81
15	90	Filed	Defts Oscar Rayford and universal Supply and Equipment Constr. Co.'s notice of motion for a protective order vacating notice for interrogatories dated 5/6/81 etc. ret. 6/22/81
22			Pretrial conference held before the Magistrate
26	91	Filed	Defts H.F. Bodewes and Carpenters District Council of Buffalo and Vicinity answers and objections to Pltf's supplementary interrogatories of Defts
June 1	92	Filed	Defts Victor Scaravilli and S & M/McHugh/Kenny's notice of motion dismissing Pltfs amended and supplementary complaint ret 7/27/81
15	93	Filed	Stipulation among Walter L. Jones Dev. Corp. Inc., Robert Chester and Keystone Steel directing that Chester and Keystone shall have until 6/10/81 to answer Jones amended & supplemental complaint etc.
19	94	Filed	Stipulation among Walter L. Jones Dev. Corp.

CIVIL DOCKET CONTINUATION SHEETS (CONT.)

1981

June 19	94	(cont)	Inc., Robert Chester and Keystone Steel Constr. Co., Inc., directing that Chester and Keystone have until 6/26/81 to answer Jones amended supplemental complaint etc.
24	95	Filed	Order directing that John L Hargrave is permitted to withdraw as atty for Pltf and that Charles L. Davis be substituted as attorney of record etc. - Elfvin, DJ Notice and copies to all counsel F-237
26	96	Filed	Defts Chester & Keystone Steel notice of motion, motion, memeorandum is support of motion for a more definite statement ret. 7/13/81
26			**(Amended docket entry for 5/22/81)** Pretrial conference held before the Magistrate. Pltfs' attorney directed to serve on defense counsel by 5/28/81 an affidavit as to discovery needed from each deft in order to respond to motion to dismiss. Further conference scheduled for 5/29/81 at 3:00 P.M.
30	97	Filed	Defts Robert Chester and Keystone Steel's affidavit of sevice of Virginia H. Pasquantino
July 1	98	Filed	Pltfs notice of motion to amend the complaint etc. ret. 7/13/81
13		Court	grants Pltf's motion to amend complaint, to be filed not later than 8/7/81 and Pltf to submit order, all motions to dismiss calendered for 7/27/81 adjourned to 8/18/91. Motion by Defts and Chester and Keystone Steel Construction Co. also adjourned to 8/17/81
17	99	Filed	order directing that Pltf is allowed to amend his complaint and to serve same no later than 8/7/81 etc. -Elfvin, DJ. notice & copies to all counsel F-238
22	100	Filed	Defts Robert Chester and Keystone Steel construction Co. Inc., objections and answers to Pltf's interrogatories

CIVIL DOCKET CONTINUATION SHEETS (CONT.)

1981		
July29	101	Filed Deft Emanuel Humes, Humes Industrial and Humes Contracting Company's notice of appearance of Roy W. King appearing as attorney for said defts
Aug 7	102	Filed Pltfs Amended Complaint
17		Defts motions to dismiss take off calendar as amended complaint has been filed by Pltf
20	103	Filed Pltf's second amended complaint
20	104	Filed Pltfs affidavit of Walter L. Jones in support of motion for preliminary injunction
21		Court hears Pltf's motion for preliminary injunction of two bids, court grants the injunction and will hear further argument at 4:00 PM on 8/26/81; Pltf to furnish memo by 8/24/81, replies by Defts by 8/25/81. Recorder on tape 172 trak two
24	105	Filed Deft NFTA's affidavit of Theodore D. Beck in opposition to motion for prelimnary injunction
24	106	Filed Deft UMTA's affidavit of C. Donald O'Connor
26	107	Filed Affidvit of Lawrence A. Elia in oppostion to motion for prelimnary injunction
26		Court considers motion submitted for preliminary injunction. Recorder on tape 173 trak two
28	108	order directing that Pltf's motion to continue and extend preliminary injunction is denied and said injunction is dissolved and rendered of no further force or effect. - Elfvin,DJ. Notice & Copies to C. Donald O'Connor, Timothy Toohey and James Gresens F-239
Sept9	109	Filed Defts Cornelius Cavanaugh, Siegfried Construction Co., John Sanders and Slattery Assc's notice of motion for an order dismissing the second amended complaint etc.

CIVIL DOCKET CONTINUATION SHEETS (CONT.)

981			
ept 9	110	Filed	Defts affidavit of service by mail - served on Messrs. Davis, Toohey, O'Connor, Turner, and Gresens on 9/8/81
11	111	Filed	Deft Herbert F. Darling and Herbert F. Darling Inc,'s notice of motion for an order dismissing the second amended complaint
28	112	Filed	Defts notice of motion, motion & cert of service dismissing 4th amended complaint, etc. ret. 11/23/81
Oct 7	113	Filed	Order & Memorandum supporting order entered 8/28/81 that Pltf failed to show the balance of hardships tips decidedly in its favor so as to justify preliminary relief on its race discrimination claim. Whether the 2nd prong of the applicable test has been satisfied is therefore moot. for this and the reasons discussed in this order, I find that Pltf is not entitled to the extraordinary sanction of preliminary injunction relief he seeks.-ELfvin, DJ. Notices & cy to all attys. F-241
8	114	Filed	Joseph DiPirro, V.P. of Siegfried Construction , affidavit in connection w/motion to dismiss
8	115	Filed	Order directing Pltf Corp to show cause 10/19/81 at 9 am in Pt II of this court why individuals and entities in his amended complaint, filed 8/7/81 shd not be dropped frm lawsuit pur. to Fed. R. Civ P Rule 21 and this action dismissed as to each of them.-Elfvin, DJ. Notices & cy of all attys. F-241
13	116	Filed	Herbert F. Darling, Jr., affidavit
13	117	Filed	Federal Defts motion to dismiss Pltf's amended & supplemental complaint, dated 8/14/81 or alternatively for summary judgement
16	118	Filed	Pltf's counsel 1st interrogatories to Deft NFTA
19	119	Filed	Pltf's counsel 1st interrogatories to Deft UMTA

CIVIL DOCKET CONTINUATION SHEETS (CONT.)

1981		
Oct19	120	Filed Pltf's counsel 1st interrogatories to Deft contractors
19		**Court notes no appear. by Pltf; Defts to submit order dropping Defts as listed in OTSC**
20	121	Filed William Nitterauer, Esq certificate of svc of Memo of Law, etc.
20	122	filed William Nitterauer, Esq certificate of svc of true & correct cy of afficavit served at attys
20	123	filed Affidavit of service on individual or Corp
26	124	Filed Deft Darling & Darling, Inc notice of motion for an order estending time to answer interrogatories & motion to dismiss 2nd amended complaint (no ret date)
29	125	Filed Defts, Francis, John Cowper Co., Bartholomew, Fruin-Colnon/Traylor Bros/L & W Concrete notice of motion, motion, affidavit of James Gresens, Esq in support of motion for extension of time to respond to Pltf's interrogatories, ret 11/2381
Nov 3	126	Filed **Order that Defts listed in Order dated and signed 11/2/81 and filed 11/3/81 are dropped w/o leave to further amend nd with prejudice as to these Defts.-Elfvin,DJ. Notices & cy to all attys. (#126)** F-242
5	127	filed Pltfs notice of motion, motion to compel answers to Pltf's counsel 1st interrogatories & to extend briefing w/attached supporting affidavit of Charles Davis, esq ret. 11/23/81
9	128	Filed Deft. UMTA response to Pltf's motion to extend briefing time & compelling answers to interrogatories, certificate of svc.
13		Court Hears argument on Pltf's motion to extend time on briefing for Defts motion to dismiss and to compel answers to interrogatories, and Deft's motions to stay answers to interrogatories submited. Not recorded.

1981

Nov19	129	Filed	Deft UMTA notice of motion & motion for enlargement of time to respond to Pltfs interrogatories,w/supporting affidavit of C. Donald O'Connor, AUSA, ret on 11/30/81
23	130	Filed	cert cy of motion of Pltf-Appellant Walter L. Jones to overturn Dist Ct. order and order of U.S. Ct of Appeals denying same and dismissing the appeal w/o prejudice as a non-appealable order
23	131	Filed	Pltf's reply to motions to dismiss and cross motion for summary judgement
30	132	Filed	order directing Defts' motion to extend their time to respond to Pltf's present interrogatories until 30 days after entry of a decision on the motions to dismiss is granted; that Pltf may file & serve upon Defts within 10 days of the entry of this order, a revised set of interrogatories directed specifically to matters pertinent to its conspiracy charges. Defts are to respond to such interrogatories within 30 days of service of the same upon them. Pltf thereafter may apply to this ct for leave to further amend its complaint in light of information gained thru such interrog & shall file & serve any such application w/in 10 days of receipt of all Defts' responses. Failing such timely application, a schedule for the submission of memoranda and for oral argument on Defts' motions to dismiss will be forwarded to parties.-Elfvin, Dj. Notices & cys to all attys. F-242
23		Court	will file an order re extension of time and discovery on motions to dismiss, and will consider Pltf's motion for summary judgement
Dec11	133	Filed	Pltf's counsel 2nd interrogatories to Deft NFTA, et al

1981			
Dec17	134	Filed	Defts Francis; Cowper Co.; Bartholomew; Fruin-Colnon/Traylor/L & W Concrete notice of motion/ motion w/affidavit of Atty Gresens in support of motion for protective order, ret 12/28/81
22	135	Filed	Defts Herbert Darling, & Darling & Darling Inc. notice of motion for protective order,w/supporting affidavit of Atty Nitterauer, ret 12/28/81
23	136	Filed	affidavit of John J. Cooney, Esq.
28	137	Filed	Pltf's notice of cross motion to compel ans to Pltf's counsel 2nd written interrogatories, ret 12/28/81 w/attached affidavit
28			Court heard argument on Defts motions for protective order, Pltf's motion to compel answers. Decision reserved. Not recorded
1982			
Jan13	138	Filed	Federal Defts' responses to Pltf's interrogatories
22	139	Filed	Memorandum & Order denying Defts' motion for a protective order.-Elfvin, DJ. Notices & cys to all attys. F-244
26	140	Filed	Exhibits pertaining to Pltf's counsel 2nd interrogatories to Deft NFTA, et al
26	141	Filed	Deft NFTA answers to interrogatories
Feb19	142	Filed	Deft Darling's answers to interrogatories/w/cert of svce
22	143	Filed	Defts Cavanaugh, Siegfried, Sanders & Slattery answers to interrogatories, w/attached certificate of service

PAGE 9, (FROM FEB. 19, 1982 - NOV. 9, 1982) (NR 144-166)
HAVE BEEN OMMITTED

APPENDIX F

PLAINTIFF JONES' PRO SE MOTION
TO SUPPLEMENT AND AMEND
COMPLAINT
DATED MARCH 17, 1981

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES AND
WALTER L. JONES DEVELOPMENT CORPORATION, INC.
475 Statler Hotel
Buffalo, New York 14202

CIV 80-1075E

PLAINTIFFS
VS

NOTICE OF MOTION
FOR LEAVE TO SUPPLEMEN
AND AMEND COMPLAINT

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA)
et.al.

DEFENDANTS

Please take notice that on the 30th day of March, 1981, at 9:00 in the forenoon, the undersigned will move this Court at Part 2, United States Courthouse, 68 Court Street, Buffalo, New York, for an order granting Plaintiffs, Walter L. Jones, attorney pro se for Walter L. Jones personally and as owner of WALTER L. JONES DEVELOPMENT CORPORATION for a leave to supplement and amend complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure.

Walter L. Jones
Walter L. Jones, attorney pro se for personal
Walter L. Jones and as owner of WALTER L. JONES DEVELOPMENT CORPORATION
475 Statler Hotel
Buffalo, New York 14202

Dated: March 16, 1981
Buffalo, New York

APPENDIX G

PLAINTIFF'S AMENDED AND SUPPLEMENTAL COMPLAINT

FILED ON APRIL 3, 1981

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES AND
WALTER L. JONES DEVELOPMENT CORPORATION, INC.
475 STATLER BUILDING
BUFFALO, NEW YORK 14202

PLAINTIFFS

CIV 80-1075E
AMENDED AND
SUPPLEMENTAL
COMPLAINT

VS.

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA)
METRO DIVISION
181 ELLICOTT STREET
BUFFALO, NEW YORK 14205

URBAN MASS TRANSPORTATION ADMINISTRATION (UMTA)
400 7th STREET SOUTH WEST
WASHINGTON, D.C. 20590
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
STATE CAMPUS (NYSDOT)
1220 WASHINGTON AVENUE
ALBANY, NEW YORK 12232

NEAL CAVANOUGH AND SEIGFRIED CONSTRUCTION CO.,
3980 SHERIDAN DRIVE INC.
BUFFALO, NEW YORK 14224

AND

JOHN SANDERS AND SLATTERY ASSOCIATES, INC.
46 54th ROAD
MASPETH, NEW YORK 11378

HERBERT F. DARLING AND HERBERT F. DARLING,
131 CALIFORNIA DRIVE INC.
WILLIAMSVILLE, NEW YORK 14221

EARL FRANCIS AND JOHN W. COWPER CO., INC.
4246 RIDGE LEA ROAD
AMHERST, NEW YORK 14240

S.H. BARTHOLOMEW AND FRUIN COLNON/ TOM TRAYLOR AND TRAYLOR BROTHERS, AND WILLIAM STERLING AND ONYX EQUIPMENT CO.
1706 OLIVE STREET, ST. LOUIS, MISSOURI 53103

VICTOR SCARAVILLI AND S & M McHUGH KENNY
29125 HALL STREET
SALON, OHIO 44139

OSCAR RAYFORD AND UNIVERSAL SUPPLY EQUIPMENT & CONSTRUCTION CO.
3141 SOUTH PARK AVENUE
BUFFALO, NEW YORK 14218

JOHN M. FUHRMANN AND CONSTRUCTION INDUSTRY EMPLOYERS ASSOCIATION
625 ENSMINGER ROAD
TONAWANDA, NEW YORK 14150

EDWARD COLE AND TRESCO DISTRIBUTIONS
504 BRISBANE BUILDING
BUFFALO, NEW YORK 14203

CARMEN A. GALLO AND AMIGA CONSTRUCTION
249 ALLE STREET
BUFFALO, NEW YORK 14202

EMANUEL HUMES AND HUMES INDUSTRIAL ELECTRIC
1827 SENECA STREET
BUFFALO, NEW YORK 14210

AND

EMANUEL HUMES AND HUMES CONTRACTING CO.
1445 SHERIDAN DRIVE
BUFFALO, NEW YORK 14223

JOSEPH MYLES AND TRASH LAND TRUCKING
3255 LOCKPORT ROAD
NIAGARA FALLS, NEW YORK 14223

ROBERT CHESTER AND KEYSTONE STEEL
P.O. BOX 485
WOODBURY, NEW JERSEY 08096

ROBERT L. PITTS AND P & S SUPPLY
2045 PEACH TREE RD N.E.
ATLANTA, GEORGIA 30309

JAMES LYLES AND L & W CONCRETE
1101 ST. PAUL STREET
SUITE 410
BALTIMORE, MD 21202
AND
2301 NORTH MONROE STREET
BALTIMORE, MD

DeVILUS GRAY AND AFTCO INTERNATIONAL TRADING CO.
507 STATLER HILTON
P.O. BOX 1081
BUFFALO, NEW YORK 14202

PAUL HARRISON AND
DOWNTOWN DUMP TRUCK SERVICE
113 GILLETTE STREET
BUFFALO, NEW YORK 14214

DEAN WILLIAMS AND
NATIVE AMERICAN CONSTRUCTION COMPANY
367 DELAWARE AVENUE
BUFFALO, NEW YORK 14202

WILLIAM TABORN AND NELSON PETERS, ASSOCIATES
220 DELAWARE AVENUE
BUFFALO, NEW YORK 14202

DONALD J. BLAIR AND BUILDING TRADES
COUNCIL OF BUFFALO AND VICINITY
175 GREAT ARROW AVENUE
BUFFALO, NEW YORK 14207

RONALD M. FINO AND LABORERS LOCAL UNION NO. 210
481 FRANKLIN STREET
BUFFALO, NEW YORK 14202

JOSEPH F. COLERN AND MICHAEL FITZPATRICK,
IRON WORKERS LOCAL UNION NO. 6
196 ORCHARD PARK ROAD
BUFFALO, NEW YORK 14224

LEONARD S. CONIGLIO AND CEMENT MASON'S LOCAL
UNION NO. 511
685 ELMWOOD AVENUE ROOM 206
BUFFALO, NEW YORK 14222

HERMAN F. BODEWES AND CARPENTERS DISTRICT COUNCIL
300 KENSINGTON AVENUE
BUFFALO, NEW YORK 14214

LEO HOPKINS AND OPERATING ENGINEERS LOCAL UNION
NO. 17, 17A, 17B
150 COMMERCER STREET
WEST SENECA, NEW YORK 14224

LAWRENCE J. STROH AND NATIONAL ELECTRICAL
CONTRACTORS ASSOCIATION
WESTERN NY CHAPTER
361 DELAWARE AVENUE
BUFFALO, NEW YORK 14202

PLUMBING CONTRACTORS ASSOCIATION OF
ERIE COUNTY, NY, INC.
282 DELAWARE AVENUE DEFENDANTS
BUFFALO, NEW YORK 14202

INTRODUCTORY STATEMENT

1. Plaintiff , WALTER L. JONES , acting as attorney Pro se for Walter L. Jones, individually and Mr. JOHN L.HARGRAVE SR., counsel for WALTER L.JONES DEVELOPMENT CORPORA-

TION INC., a corporation, organized under the laws of of the State of New York, and is totally owned by a Black American, and as such , is a valid Minority Business Enterprise, (MBE), within the meaning of the Urban Mass Transportation Administration Circular - UMTA C 1165.1, interim (MBE) Policy and Requirement for Grant recipients, as amended.

That Plaintiff, Walter L. Jones, a Black American, is personally the owner of Walter L. Jones Development Corporation, Inc., a Black non-union prime contracting firm, and as such, falls within the purview of UMTA's Circular C 1165.1, and as such, qualifies as a (MBE), and was so certified by Defendant, NFTA. Walter L.Jones, owner of the Corporation, has been harmed and damaged, personally by the actions of Defendants whose actions were directed at Plaintiff, Walter L.Jones, personally and his Corporation for his actions and efforts to introduce his, and other, non-union minority construction firms to the Authority, with the intent ot acquiring contracts on the local Light Rail Rapid Transit Construction Project.

That Plaintiffs claim that Defendant, NFTA, while acting under Agreement with an authorization from UMTA and the NYSDOT, made unlawful union monopolistic non-strike exclusion agreements with local construction unions, deferred required assistance, conspired against, racially discriminated against, organizationally discriminated against, colluded against, excluded and deprived the Plaintiffs of their rights guaranteed by the Constitution of the United States, particularly Title IV of the Civil Rights Act of 1964 and the Department of Transportation's Order #4000 7A, Section 12F of the Urban Mass Transportation Act of 1964, as amended, DOT order #1000 (12) and executive Order #11625, and Section 109, Article B of Defendant, NFTA's MBE funding agreement with the UMTA, under the policy and commitment statements of the Former Chairman and Executive Director, which incorporates 16 procedures and commitments

to assist MBEs in obtaining construction contracts on the local Light Rail Rapid Transit Construction Project, according to its approved (MBE) Affirmative Action Program, as a minimum, in receiving the Grant from UMTA.

That Defendnat, NFTA, awarded each contract to the next lowest bidders, all White union bidders, and totally rejected Plaintiffs' Black non-union competitively low bids, upon the alleged grounds that no bid bonds were submitted by the WALTER L. JONES DEVELOPMENT CORPORATION, INC., and that Plaintiffs had insufficient experience and financial backing, while Defendant, NFTA, has a binding and legal obligatory agreement with UMTA, in conformance with UMTA Circular 1165.1 (MBE) Policy, requiring for Grant recipients, to assist Plaintiffs, a MBE contracting firm, through the waiving of bid bond, and in the securing of performance bonding and financing needed to perform its

competitively won contracts, together with any other necessary assistance that might have been required.

That Plaintiffs are seeking mandatory and permanent injunctive relief, financial and punitive money damages, and an order restraining Defendants from their conspiracy, collusion, monopolizing, racial discrimination and organizational discrimination against Plaintiffs and the award of a construction managers contract, to Plaintiffs, WALTER L. JONES AND WALTER L. JONES DEVELOPMENT CORPORATION, INC., over the contracts that Plaintiffs won through competitive bidding, (contracts number 1B-0051, 1B-0031 and 1B-0011), according to current established estimating manual costs, together with retroactive profit and equipment payments, and / or a judgment for financial loss and punitive money damages for depriving Plaintiffs of their civil and constitutional rights, to participate in the building of the local Light Rail Rapid Transit Construction Project, and order the Fruin Colnon / Traylor Brothers and NFTA,

discharge false, invalid minority "fronts", L & W Concrete and Onyx Equipment and Construction Co., as their joint - venture partners and order that Defendants, Fruin Colnon / Traylor Brothers award, to Plaintiffs, the requested joint - venture contract on Contract #1C0011, together with retroactive profit and equipment payments, or financial and punitive money damages.

II JURISDICTION

1. That this action is brought and jurisdiction lies purusant to Title 28 USC Section 1331, 1343, 1654, and Title USC 42 Section 1985. Venue lies in this district pursuant to Title 28 Section 1391.

III CLAIM FOR RELIEF

2. That heretofore and on or about the 13th day of November 1978, the Defendant, NFTA, advertised for bidders on the City of Buffalo's Light Rail Rapid Transit System, Contract No. 1B0051, Cut and Cover, among others.

3. That Plaintiff, Walter L. Jones, President and owner of Walter L. Jones Development Corporation, Inc., prepared and submitted a bid for the Walter L. Jones Development Corporation, Inc., on or about the 18th day of January, 1979, and when bids were opened, said Plaintiff, Walter L. Jones Development Corporation, Inc., a Black, non-union prime contracting firm, was the low bidder at $11,478,316.66 (A copy of which is attached hereto and made a part of, labeled exhibit 1).

4. That Defendant, UMTA, as the federal funding agency for eighty percent (80%) of the local Light Rail Rapid Transit System, in its MBE policy and requirement for grant recipients in Circular 1165.1 recites 9 procedures that must be incorporated into grantee funding application minimal (A copy of which is attached hereto and made a part of, labeled exhibit 2).

5. That Defendant, NFTA, incorporated 16 procedures that it would use to guarantee minority participation as a conditional part of

receiving the Grant to construct and quip the local Light Rail Rapid Transit Construction Project. (Copies of which are attached hereto and made a part of, labeled exhibit 3, 3A, 4 and 5).

6. Defendant, NFTA, specifically states under Procedures and means to ensure that MBE's will have an equitable opportunity, and means to overcome barriers to program participation, that the Defendant, NFTA, will assist (MBE) bidders, in the acquisition of bonding, financing and other assistance as a requirement of the Grant. (Copies of which are attached hereto and made a part of, labeled exhibit 4 and 5).

7. That the Former Chairman signed the Grant application on the 3rd day of May, 1978 to receive a mass transportation capital improvement Grant under the Urban Mass Transportation Act of 1964 as amended May 15, 1978. (A copy of which is attached hereto and made a part of, labeled exhibit 5A).

8. That Plaintiffs repeatedly pointed out to the Defendants, NFTA and UMTA, the requirements of their contract and requested assistance verbally and in writing, from both, but Defendants declined and refused to assist Plaintiffs in any manner. (Copies of which are attached hereto and made a part of, labeled exhibits 6 thru 21 and 21a).

9. That finally on or about the 12th day of February, 1979, Defendant, NFTA, rejected Plaintiffs' Black non-union competitive low bid. (A copy of which is attached hereto and made a part of, labeled, exhibit 22).

10. That on or about the 5th day of March, 1979, Defendant, NFTA, awarded the contract to SEIGFRIED CONSTRUCTION COMPANY AND SLATTERY ASSOCIATES, INC., both White union prime contractors, and at their bid of $15,711,487.00, a difference of $4,233.170.34 more than Plaintiffs' Black non-union competitive low bid. (A copy of which is attached hereto and made a part of, labeled exhibit 23).

11. That heretofore and on or about the 15th day of June, 1979, the Defendant, NFTA, advertised for bidders on the City of Buffalo's Light Rail Rapid Transit System, Contract No. 1B0031, Cut and Cover, among others.

12. That Plaintiffs, Walter L. Jones, the President and owner of Walter L. Jones Development Corporation, Inc., prepared and submitted a bid for Walter L. Jones Development Corporation, Inc., on or about the 7th day of August, 1979, and when bids were opened, said Plaintiffs, Walter L. Jones and Walter L. Jones Development Corporation, Inc., wre the low competitive bidders at $13,254,763.00. (A copy of which is attached hereto and made a part of, labeled exhibit 24).

13. That Defendant, UMTA, as the Federal funding agency for eighty percent (80%) of the local Light Rail Transit System, in its MBE Policy and Requirement for Grant recipient in Circular 1165.1, recites nine (9) procedures that must be incorporated into Grantee's

funding application; minimal. (A copy of which is attached hereto and made a part of, labeled exhibit 2).

14. That Defendant, NFTA, incorporated sixteen (16) procedures that it would use to guarantee minority participation as a conditional part of receiving the Grant to construct and equip the local Light Rail Rapid Transit Construction Project. (Copies of which are attached hereto and made a part of, labeled exhibits 3, 3A, 4 and 5).

15. That Defendant, NFTA, specifically states, under Procedures and means to ensure that MBE's will have an equitable opportunity, and means to overcome barriers to program participation, that the Defendant, NFTA, will assist MBE bidders, in the acquisition of bonding, financing and other assistance, as a requirement of the Grant. (Copies of which are attached hereto and made a part of, labeled, exhibits 4 and 5).

16. That Plaintiffs had repeatedly pointed this out to the Defendants, NFTA and UNTA, but Defendants steadily declined and re-

fused to assist Plaintiffs in any manner. (Copies oif which are attached hereto and made a part of, labeled exhibits 6 thru 21 and 21a and 21b).

17. That finally on or about the 13th day of August, 1979, the NFTA, rejected Plaintiffs' low competitive, Black non-union bid. (A copy of which is attached hereto and made a part of, labeled exhibit 25).

18. That on the 10th day of September, 1979, NFTA, awarded the contract to one HERBERT F. DARLING, INC., a White union prime contractor, and at its bid of $14,797,131.00, a difference of $1,542.268.00 more that Plaintiffs' low competitive, Black non-union competitive low bid. (A copy of which is attached hereto and made a part of, labeled, exhibit 26).

19. That heretofore and on or about the 15th day of October, 1979, the Defendant, NFTA, advertised for bidders on the City of Buffalo's Light Rail Rapid Transit System, Contract No. 1B-0011, Cut and Cover, among others.

20. That Plaintiff, Walter L. Jones, the President and owner of Walter L. Jones Development Corporation, Inc., prepared and submitted a bid for the Walter L. Jones Development Corporation, Inc., on or about the 18th day of December, 1979, and when the bids were opened, said Plaintiff, Walter L. Jones Development Corporation, Inc., was the low competitive bidder, at $23,134,826.00. (A copy of which is attached hereto and made a part of, labeled exhibit 27).

21. That Defendant, UMTA, as the federal funding agency for eighty percent (80%) of the local Light Rail Rapid Transit System, in its MBE Policy and Requirement for Grant recipient in Circular 1165.1, recites nine (9) procedures that must be incorporated into Grantee's funding application; minimal. (A copy of which is attached hereto and made a part of, labeled exhibit 2).

22. That Defendant, NFTA, incorporated sixteen (16) procedures that it would use to

guarantee minority participation as a conditional part of receiving the Grant to construct and equip the local Light Rail Rapid Transit Construction Project. (Copies of which are attached hereto and made a part of, labeled exhibits 3, 3A, 4 and 5).

23. That Defendant, NFTA, specifically states under Procedures and means to ensure that MBE's will have an equitable opportunity, and means to overcome barriers to program participation, that the Defendant, NFTA, will assist MBE bidders, in the acquisition of bonding, financing and other assistance, as a requirement of the Grant. (Copies of which are attached hereto and made a part of, labeled exhibit 4 and 5).

24. That Plaintiffs had repeatedly pointed this out to the Defendants, NFTA and UMTA, but the Defendants steadily declined and refused to assist Plaintiffs in any manner. (Copies of which are attached hereto and made a part of, labeled exhibits 6 thru 21 and 21a and 21b).

25. That finally on or about the 30th day of January, 1980, Defendant, NFTA, rejected Plaintiffs' Black non-union competitive low bid and awarded the contract to one JOHN COWPER COMPANY, a White union prime contractor, and at its bid of $24,325,463.00, a difference of $1,190,637.00 more than Plaintiffs' Black non-union competitive low bid. (A copy of which is attached hereto and made a part of, labeled exhibit 28).

26. That a required part of UMTA's MBE agreement with the grantees, requires the recipient of its grants, in this case the NFTA, in the amount of 359 Million Dollars), to solicit and assist available bonafide (MBE) owned construction contracting firms that make certified efforts to participate in the certification as (MBE's) and in the acquisition of contracts, financing, bid and performance bonding, and other assistance if required. (A copy of which is attached hereto and made a part of, labeled exhibit 2).

27. That this binding requirement of Defendant, NFTA, to UMTA has been denied to Plaintiffs minority owned non-union construction firms by both Defendants, NFTA and UMTA through agreement with unions.

28. That Plaintiff, Walter L. Jones Development Corporation, Inc., is an available New York chartered, bonafied (MBE) prime contractor and was so certified by the NFTA, on the 1st day of February, 1979. (A copy of which is attached hereto and made a part of, labeled exhibit 29).

29. That, and as such a certified (MBE) prime contractor, it has the right to participate in the bidding and construction of the Light Rail Rapid Transit System and compete with other prime contractors, as a Black non-union prime contractor, for any portion of the contract, and with special emphasis, receive assistance in financing, bonding and performance of its competitively won contracts from the NFTA, according to its MBE agreement with UMTA, in conformance with Circular 1165.1.

30. That Plaintiff, Walter L. Jones, the President and owner of Walter L. Jones Development Corporation, Inc., communicated and even pleasded with the NFTA and UMTA, both verbally and in writing, informing the NFTA and UMTA of the requirements of their MBE funding agrement, relating to minority contractors, who make certified efforts to participate on UMTA - federally funded construction projects, and further, requested assistance in obtaining bonding and financing, from both. (Copies of which are attached hereto and made a part of, labeled exhibits of 6,7,8,9,14,16,19,and 21).

31. That Plaintiffs even made suggestions as to the methods of achieving that goal. No assistance was proffered and all suggestions and plans for assistance and/or obtaining a bond and financing were ignored by both the NFTA and UMTA.

32. That Plaintiffs President, as the Chairman of the Independent Minority Contractors of Niagara Frontier, Inc., a local non-union minority contractors association, wrote to Defendant, NFTA's former Chairman, on several occasions, from October 8, 1978 to December 15, 1978, stating the local non-union minority contractors interest in being awarded a portion of the local Light Rail Rapid Transit Construction Project. (Copies of which are attached hereto and made a part of, labeled exhibits 30 thru 34).

33. That Plaintiffs President, as the Chairman of the Independent Minority Contractors of Niagara Frontier, INc., established a meeting with the Defendant, NFTA's former Chairman, Executive Director, and the existing treasurer, a union Board of Commissioner, on the 6th day of December, 1979. (A copy of which is attached hereto and made a part of, labeled exhibit 35).

34. That Plaintiffs President, as Chairman of the Independent Minority Contractors of Niagara Frontier, Inc., discussed a set aside

prime contract and was told that the Authority could not set aside contracts for minority businesses, because of NYS Law and union agreements.

35. That Defendant, NFTA, Chairman and Executive Director stated that, the Authority would welcome a joint venture of minorty contractors, to competitively bid on the local Light Rail Rapid Transit Construction Project Cut and Cover section.

36. That Plaintiffs, President did, as Chairman of the Independent Minority Contractors of Niagara Frontier Inc., receive a letter dated December 26, 1978, from the Defendant, NFTA's former Chairman, which encourages and advises Plaintiffs' President, as Chairman of the Independent Minority Contractors of Niagara Frontier, Inc., to joint venture with other minority contractors and submit a bid, at the scheduled openings, in competition with other general contractors, as are interested. (A copy of which is attached hereto and made a part of, labeled exhibit 36).

37. That Plaintiffs did offer to sub-contract a portion of each contract from each White union contractor, that was awarded the Cut and Cover contracts, which were all denied through non response or written denial. (Copies of which are attached hereto and made a part of labeled exhibits 37 thru 40 and 40a).

38. That Plaintiffs did on the 22nd day of June, 1979, prepare and submit a joint venture proposal to Fruin Colnon / Traylor Brothers, Inc., to become their joint venture partner, in place of the Onyx Equipment Company. (A copy of which is attached hereto and made a part of, labaled exhibit 41).

39. That on the 25th day of July, 1979, Plaintiffs received a letter response from Fruin Colnon, which denied any consideration to Plaintiffs' joint venture proposal. (A copy of which is attached hereto and made a of, labeled exhibit 41a).

40. That Plaintiff responded to Defendant, Fruin Colnon's letter on the 31st of

July, 1979, confirming the letter of denial which recited the reason for denial. (A copy of which is attached hereto and made a part of, labeled exhibit 41b).

41. That Defendant, Fruin Colnon, did accept Onyx as a minority prime contractor to act as their joint venture partner on the local Light Rail Rapid Transit Construction Project and according to known facts, the minority' principal cannot read or calculate any construction drawings and had no construction experience other than as a common laborer.

42. That Defendant, Fruin Colnon, did, after UMTA rejected Onyx Equipment Company's minority status, obtain a non local minority prime contractor (L & W Concrete) as their joint venture partner and according to telephone conversations, L & W Concrete's principal does not have the same level of knowledge of heavy construction, as does Plaintiffs' owner and principal.

43. Plaintiffs allege that on or about the 26th day of October, 1978, Plaintiffs owner met with local representative of Defendant, Nelson Peters Associates, the local minority consultant firm, and expressed his interest in obtaining a prime construction contract with other minority contractors on the local Light Rail Rapid Transit Construction Project.

44. Plaintiffs allege that the local representative of Defendant, Nelson Peters Associates, scheduled an appointment with Plaintiff for October 30, 1978 and promised that he would notify Defendants', NFTA EEO Officer, Joe Moore, to be present to discuss a method of approaching the NFTA, about a prime construction contract.

45. That Plaintiffs owner alleges that he prepared and forwarded a letter to the local representative of Defendant, Nelson Peters Associates, on the 31st day of October, 1978, and found no one to discuss the matter with.

46. That Plaintiffs owner alleges that he prepared and forwarded a letter to the local representative of Defendant, Nelson Peters Associates, on the 31st day of October, 1978, documenting their dissatisfaction with his non-committment to assisting local minority construction contractors. (A copy of which is attached herto and made a part of, labeled exhibit 41c).

47. That defendant, Nelson Peters Associates, by their local representative, did willfully, intentionally, deceitfully and harmfully, omit stating the names of known local bonafide minority construction contractors in his report to UMTA via NFTA.

48. That Plaintiffs allege that this negative action deliberately taken by Defendant, Nelson Peters Associates, was in conformance to local union agreements that exclude non-union construction contractors from federally funded construction projects.

49. That Defendant, NFTA, states that they relied on Defendant, Nelson Peters Associates' local representative to prepare the expected goals and capabilities of local minority construction contractors.

50. That Plaintiffs allege that Nelson Peters Associates local office has and is fraudulently receiving public funds, under the cover of assisting minority construction contractors.

51. That Plaintiffs allege that Defendant, Nelson Peter Associates' local representative instructed and advised local minority trucking sub-contractors to accept hauling contracts, as a 100% MBE compliance, and to contract 50% or more back to White trucking contractors, with the intent to commit fraud. This allegation is supported by witnesses.

52. That, upon information and belief, Plaintiffs allege that Defendant, Nelson Peters Associates' local representative endorsed minority "Front" companies, such as Onyx Equipment Company,

to deprive Plaintiffs' bonafide minority construction contracting firm of their reghts guaranteed by the constitution of the United States of America.

53. That Plaintiffs, did on July 21, 1980, forward a letter to the new Chairman of the NFTA, advising him of the past events relating to the Corporation's futile efforts in obtaining a contract from the NFTA and explained UMTA regulations, pertaining to Minority Business Enterprises, and the NFTA's violation of said regulations and requested a construction manager contract of all of the Cut and Cover contracts that Plaintiffs were low competitive bidder on. (A copy of which is attached hereto and made a part of, labeled exhibit 41d).

54. That had Plaintiffs been awarded all their prime contracts according to their low competitive bids, the total percentage would have equaled only 11.1% of the total grant of 430 Million Dollars that was allocated for the local Light Rail Rapid Transit Project.

55. That UMTA Circular 1165.1 requires that a minimal percentage of a Federal Grant must go to bonafide (MBE), but set no limits as to the amount of grant that may be competitively bid on by bonafide minority business enterprises and does not eliminate or restrict minority prime contractors from participating above and beyond the minimum or established goal. (A copy of which is attached hereto and made a part of, labeled exhibit 2).

56. That UMTA Circular 1165.1 requires that the Grantee-Agency seek all available qualified bonafide (MBE's), to lower or waive bonding and assist in the obtianing of working capital and bonding is binding upon Defendants, without categorization of (MBE's) net worth of assets. (A copy of which is attched hereto and made a part of, labeled exhibit 2).

57. That UMTA Circular 1165.1, the Civil Rights Act of 1964 and the Constitution of the United States extend the same privileges and rights to Plaintiffs' minority prime contracting firm as all other bonafide (MBE's) that are participating

in the project.

58. That with special emphasis, Plaintiffs initial prime bids superceded, and is continuing to supercede all participating minority business enterprise bids or efforts to participate as prime contractors on each of the Cut and Cover contracts of the local Light Rail Rapid Transit Construction Project 1B-0051, 1B-0031, and 1B-0011.

59. That had Plaintiffs been awarded their contracts, many other non-union local minority sub-contractors and laborers would have been hired and participating on the Light Rail Rapid Transit Construction Project. (Copies of which are attached hereto and made a part of, labeled exhibits 42, 42a, 42b).

60. That instead of assisting Plaintiffs, Defendants, NFTA and UMTA, ignored all the competitive low bids submitted by Plaintiffs, Walter L. Jones and WALTER L. JONES DEVELOPMENT CORPORATION, INC., totaling $47,867,906.66 and awarded all the contracts to the next lowest bidders, vis. SEIGFRIED CONSTRUCTION COMPANY /

SLATTERY AND ASSOCIATES, INC., 1B-0051, HERBERT F. DARLING, INC., 1B-0031, and the JOHN W. COWPER CO., INC., 1B-0011. (all white union prime contractors), as hereinbefore set forth, for $54,834,081.00, a total sum of $6,966.181.34 more than Plaintiffs Black non-union competitive low bids oif $47,867,905.66, thus costing, with added emphasis, the United States' taxpayers $6,966,191.34 more to construct the Cut and Cover section of the local Light Rail Rapid Transit Construction Project.

61. That Plaintiff alleges that NFTa, former Chairman, Executive Direcotr, and existing white construction union officiating NFTA Board Members and NYSDOT, requested and instructed local white construction unions and union contractors to set up minority construction companies, so as to monopolize the total construction of the local Light Rail Rapid Construction Project, thus to fraudulently conform to federal regulations, depriving this available bonafide Black non-union prime contracting firm of its right and opportunity

to participate on the building of the local Light Rail Rapid Transit Construction Project. (Copies of which are attached hereto and made a part of, labeled exhibits 43 thru 45).

62. Plaintiffs allege that local White construction union officials sit on the NFTA's Board of Commissioners and voted on all NFTA business and contract awards pertaining to the project, which constitutes a gross conflict of interest, with the blessings of the UMTA, and NYSDOT, whereas all prime construction contracts have been awarded to White union prime contractors exclusively. (Copies of which are attached hereto and made a part of, labeled exhibits 22,23,25,26, and 28).

63. That this action is in direct violation of UMTA's funded agreement and is cause for terminating the entire contract. (A copy of which is attached hereto and made a part of, labeled exhibit 2, page 7).

64.

That all participating local unions did willfully, knowingly and intentionally design, produce and process signed agreements with White union contractors, with the knowledge of NFTA, UMTA and NYSDOT to exclude non-union prime and sub-contractors from local federal and federally-assisted construction projects; in this case, the local Light Rail Rapid Transit Construction Project. (Copies of which are attached hereto and made a part of, labeled exhibits 52 thru 57).

65. Plaintiffs allege that the NFTA and UMTA had and have knowledge of existing agreements between local construction unions and White union prime contractors (excluding non-union prime & sub-contractors), but have and are continuing to award federally funded construction contracts to these White union prime contractors, exclusively, violating and voiding their funding and financing agreements.

66. Plaintiffs allege that, the NFTA, local-participating construction unions, and the CONSTRUCTION INDUSTRY EMPLOYERS ASSOCIATION, possess a signed, no-strike agreement at the

at the request of UMTA for the construction of the City of Buffalo's Light Rail Rapid Transit Construction Project, exclusively, which constitutes collusion against Plaintiff, a Black non-union prime contractinf firm with the blessings of the UMTA and NYSDOT. (A copy of which is attached hereto and made a part of, labeled exhibit 50a).

67. Plaintiffs allege that, all named White union construction contractors have used and are using the United States mail to deliver false solicitation notices to local minority non-union prime and sub-contractors and submitting their fraudulent, false solicitation documents to the NFTA, with no intent or means, to joint venture with, or hire minority non-union prime or sub-contractors, because of the aforementioned signed agreements with local named construction unions, and this is a knowledgeable fact to Defendants, NFTA, NYSDOT, and UMTA. (Copies of which are attached hereto and made a part of, labeled exhibit 51 thru 53e).

68. Plaintuffs allege that the local union agreements is in direct violation of the United States Constitution with regard to denying non assocaites the right to Public Works Construction Contracts.

69. Plaintiffs allege that the denial of any assistance or contracts by Defendants were in force by unions and unions contractors because of Walter L. Jones' personal efforts to secure construction contract for local non-union minority construction contractors.

70. Plaintiffs allege that this lock - out action against Plaintiffs, has and is causing great financial damages, economical loss, personal humiliation, suffering and mental anguish through the denial of Plaintiffs civil and constitutional rights to participate in the building of the local Light Rail Rapid Transit Construction Project.

71. Plaintiffs allege that Federal Laws and Regulations mandating that minority prime and sub-contracting firms, unions and non-union, participate on national Federal and Federally-

assisted construction contracts, have and are being collectively violated by all named Defendants, against Plaintiffs. through agreements and willful denials.

72. That the Defendants, according to their funding agreements contract, and Federal law, cannot monopolize, discriminate against, collude against, exclude or deprive Plaintiffs' minority owned, Black non-union prime contracting firm by signed union agreements, or any other means. (Copies of which are attached hereto and made a part of, labeled exhibit 54 and 55).

73. That the above named Defendants, did willfully, knowingly and intentionally collude against, racially discriminate against, organizationally discriminated against, class discriminated against, excluded, deprived and violated the civil, constitutional, and legal rights of Plaitniffs to participate in the building of the Light Rail Rapid Transit Construction Project.

74. That these institutional, discriminatory, collusive, monopolistic and exclusion practices by all named Defendants have caused Plaintiffs severe, devastating and undue hardship, suffering, humiliation and financial damages, as well as having violated Plaintiffs civil, constitutional, and legal rights by the Defendants, generally and on the part of the NFTA, NYSDOT, and UMTA, s the Grantee and funding agencies, by virtue of their refusing to accept Plaintiffs low competitive bids and refusing to assist Plaintiffs in acquiring financing, bid and performance bonding, according to federal funding requirements and agreement between the NFTA and UMTA.

75. That the inexperience claim used by the NFTA, is not valid or true. Plaintiffs President has skills and knowledge of heavy construction and has through recent past performances, demonstrated this, by competitively bidding, with local experienced prime contractors and estimating engineers and as Project, Supervisor on an Erie County Road Bridge Project

using a minority trainee labor force in the successful performance of said contract. (A copy of which is attached hereto and made a part of, labeled exhibit 56).

76. That Plaintiffs prepard and submitted a plan and equipment questionnaire with each bid to the Defendant, NFTA, as to the method of constructing each contract that Plaintiffs competitively won, which wre more detailed and accurate than either of the white union prime contractors that were awarded the contracts. (Copies of which are attached hereto and made a part of, labeled exhibits 57 thru 62).

77. That the NFTa, claims that Plaintiffs total assets of Five Hundred Dollars ($500) was not sufficient to award its competitively won contracts; with special emphasis, is without foundation or merit, in light of all the past institutional discrimination against Plaintiffs and the meaning of a socially and economically disadvantaged minority business enterprise, as defined by UMTA Circular 1165.1

78. That UMTA Circular 1165.1 makes no mention of capital net worht for valid minority business enterprise participation on UMTA federal or federal-assisted construction projects, but makes a number of suggestions as to ways and means to assist economically disadvantaged minority American Firms, which were incorporated into the NFTA's funding agreement, under 16 procedures, to ensure that MBE's will have equitable opportunity and means to overcome barriers to program participation. (A copy of which is attached herto and made a part of, labeled exhibit 2).

79. That had Plaintiffs been awarded their contracts totalling $47,867,905.66, and had performed the contracts in accordance with their bids, after payment of labor, sub - contractors' costs and purchasing of material for the performance of said contracts, there would have accrued to Plaintiffs, a minimum gross profit of Fourteen Million, Three Hundred Sixty Thousand, Three Hundred Seventy One Dollars and Fifty Cents ($14,360,371.50), reflecting ac-

quired equipment and net profit, at the completion of all the Cut and Cover contracts.

80. That had the Defendant, NFTA, awarded Plaintiffs their contracts and assisted Plaintiffs, as is a part of its funding requirements and agreement with UMTA, Plaintiffs could have been able to acquire bid and performance bonding, financing, equipment, engineers and labor, to construct their contracts.

81. That Plaintiffs allege that Defendants, S & M McHugh and Kenney, fraudulently reported awarding Defendant, AFTCO International Trading Co., a supply contract of $1,600,000.00 as part of their MBE complaince, fraudulently depriving bonafide local known minority non-union construction contractors of their rights to obtain physical construction contracts from their firms, thus to prevent local valid non-union construction contractors from earning overhead and profits, required by the Federal Grant,

to construct the local Light Rail Rapid Transit Construction Project.

82. That Plaintiffs allege that Defendants, S & M McHugh and Kenny, reported awarding major supply contracts to Tresco Distributions and P & S Supply, totalling $729,294.00, which are both admittedly part - owned by whites, thus, avoiding awarding any portion of their physical construction sub-contracts, to known bonafide 100% minority - owned non - union construction contractors.

83. That Plaintiffs allege that Defendant, Hunes Industrial Electrical Co., fraudulently obtained a $239,000.00 service contract, as an electrical contractor from Defendants, S & M McHugh and Kenny, without being a licensed electrician, as is the criteria, for controlling interest / ownership of an electrical contracting firm, which contract, was rescinded.

84. That Plaintffs allege that Defendant, Humes Industrial Electrical was a phoney - joint venture, with Industrial Power and Lighting, a white, union electrical contracting firm, that was de-certified by Defendant, NFTA, on February 7, 1980.

85. That Plaintiffs allege that Defendant, NFTA, fraudulently reported John H. Johnson, with a $650,000.00 sub-contract from Defendant, S & M McHugh and Kenny, in June 1980 and made changes, to $650.00 in November 1980, with a letter from NFTA's attorney, stating, that an error had been made, after inquiry as to change. (See list marked exhibit 63 through 66 and letter, marked exhibit 67).

86. That Plaintiffs allege that John H. Johnson Trucking have not received any direct contract, what-so-ever, from any prime contractor on the local Light Rail Rapid Transit Construction Project.

87. That Defendant, NFTA, did not recite John H. Johnson Trucking, as having any contract with Defendant, S & M McHugh and Kenny

on the 4th day of March 1981, as was reflected in three (3) separate lists of participating minority contractors and suppliers.

88. That Plaintiffs allege that Defendants, S & M McHugh and Kenny, reported awarding $3,285,739.14 in supply contracts to MBE's who are phoney "paper MBE front" supply firms and $938,160.18 to MBE service contractors, with $239,000.00 being awarded to a proven invalid MBE, thus causing valid, minority non-union contracting firms to receive less than $699,160.00 in physical contracts, from their prime contract, totalling $35,381,213.00 (See exhibit 69).

89. That Plaintiffs allege that Defendant, Fruin Colnon / Traylor Brothers and Onyx Equipment Co., reported awarding $7,815,498.56 to MBEs in services and supply contracts, with $7,619.313.36 of said sum, being awarded to those who are mostly phoney "paper MBE front" companies and majority / joint ventures, or contracts that do not exist in any form, with $70,359.36 of said sum, admittedly being awarded to invalid MBEs, thus causing local, valid 100% minority

non-union contracting and service firms, to receive less than $196,185.00 in physical contracts. from Defendant, Fruin Colnon / Traylor Brothers and Onyx Equipment Co.'s prime contract #100011, totalling $38,949,800.99 (See exhibit).

90. That Plaintiffs allege that Defendant, Seigfried / Slattery Associates, reported awarding $2,433.033.00 to minority business, in services and supply contracts, with $2,117,500.00 being awarded to those who are paper "fronts" and part - owned by whites,thru joint ventures, with $12,103.00 admittedly being awarded to an invalid MBE, thus causing valid local 100% minority contracting firms, to receive less than $315,533.00 in valid physical contracts, from Defendants, Seigfried / Slattery Associates' prime contract #1B0051, totalling $15,711.487.00 (See exhibit).

91. That Plaintiffs allege that Defendant, Herbert F. Darling, reported awarding $2,680.585.00 to MBE's, in services and supply contracts, with $2,528.802.00 being awarded to those union MBE's who act as paper "fronts" and minority joint ventures, thus causing valid, local 100% minority owne, non-union contracting and services firms, to receive less than $151,783.00 in physical contracts, from Defendant's contract #1B0031, totalling $14,797,131.00 (See exhibit).

92. That plaintiffs allege that Defendant, John W. Cowper, reported awarding $1,998,552.46 to minority business, in services and supply contracts, with $1,362,913.23 of said sum, being awarded to those union - dominated MBE's who act as paper "fronts", with $400,000.00 admittedly being awarded to an invalid MBE, thus causing local, Black, valid 100% MBE owned contracting and services firms, to receive less than $635,639.23 in physical contracts, from Defendant, John W.

Cowper's prime contract #1B0011, totalling $24,425,463.00 (See exhibit).

93. That Plaintiffs allege that valid, 100% MBE owned contracting and services firms, received, less than $1,999,300.23 in valid,physical contracts, from all prime contractors on the Project, which total $129,265,094.00 and that Black, valid non-union contracting firms, received no physica contracts , on the Project, what-so-ever.

94. That Plaintiffs allege that Defendant, S & M McHugh and Kenny, did enter into a service sub-contract, with Humes Industrial Electrical Co., for $239,000.00 which substantiates Plainitffs' claims that Defendnats, S & M McHugh and Kenny, entered into contracts with invalid phoney MBE firms, to deprive bonafide local, valid non-union MBE contracting firms, of their rights to participate in the building and profits of the local Light Rail Rapid Transit Construction Project and to conform to local construction union

agreements, not to hire any non-union contractors on the Project.

95. That Plaintiffs allege, that, upon information and beleif, Defendant, Buffalo Down Town Dump Truck Service, is a dump truck firm, set up by Freeway Construction Co., using one of their fromer truck drivers, Paul Harrison, as the President, and does not have the facilities, to administer the supply contract that it was awarded from Defendants, S & M McHugh and kenny, other than through a "paper" transaction.

96. That Plaintiffs allege that Defendant, AFTCO International Trading Co., does not have an office, or any operation of their business at the address that is reflected on the list of participating minority contractors and suppliers, that reflects a contract, totalling $1,600,000.00 with Defendants, S & M McHugh and Kenny.

97. That Plaintiffs allege that Defendant, NFTA, did certify AFTCO International Trading Co., without checking out the

history, status or background of said company.

98. That Plaintiffs allege that these schemeful, fraudulent actions, by Defendants, S & M McHugh and Kenny, were pertetrated, to deny local, valid 100% Black - owned non union minority contracting firms, their rights and opportunities, to participate in the building and profits of the local Light Rail Rapid Transit Corporation Project, as required by Federal Law and is a requirement in receiving the Grant.

99. That Plaintiffs allege that Defendants, Seigfried / Slattery Associates, fraudulently reported awarding a $1,332,500.01 supply contract to Universal Equipment Supply and Construction Co.

100. That Plaintiffs allege that Defendants, Seigfried / Slatter Associates, repoted awarding a $585,000.00 services / steel contract, to Keystone Steel Construction a non - local construction company, which is

reflected as being owned by minority and majority persons.

101. That Plaintiffs allege that Defendant, Universal Equipment Supply and Construction Co., in nothing more than a paper "front" for white supply or contracting firms and do not have any work force or supply facilities, from which, to perform its' supply contract operations, other than Defendant Seigfried Construction's equipment yard.

102. That Plaintiffs allege that Keystone Steel is nothing more than a paper minority "front", with no listing or location of their business, except through a Post Office Box Number, and do not have any work force, supply or construction facility, from which to perform its' operation of $585,000.00 in service steel contracts.

103. That Plaintiffs allege that these scheming, fraudulent actions by Defendants, Seigfried / Slattery Associates, were

perpetrated, to deny their valid minority (100% minority -owned) non union firm a sub-contract and their rights to participate in the building and the profits of the local Light Rail Rapid Transit Construction Project, as required by Federal Law, and is a requirement in receiving the Grant.

104. That Plaintiffs allege that Defendant, John W. Cowper Co., fraudulently reported awarding Trashland Trucking Co., a $400,000.00 trucking contract, as a valid minority business enterprise, to fraudulently meet their MBE goal and deny valid MBE's their rights, to participate in the building and profits of the local Light Rail rapid Transit Construction Project.

105. That Plaintiffs allege that Defendant, John W. Cowper Co., reported awarding a $1,200,000.00 supply contract to Native American Construction Co., a Indian minority union company, so as to deprive Plaintiffs and other Black - minority owned non - union firms, of requested sub - contracts.

106. That Plaintiffs allege that Defendant, NFTA, reported that Trashland Trucking's MBE status was revoked, on January 27, 1981, which substantiates Plaintiffs' claims, that Defendant, John W. Cowper Co., entered into contracts, with invalid minority business enterprises, thus depriving their and other non union bonafide valid MBE contracting firms, of their rights to participate in the building and profits of the Project, as is required by Federal Law.

107. That Plaintiffs allege that Defendant, John W. Cowper Co., reported awarding a total of $1,362,913.23 in supply contracts to Indian MBE firms, that act as paper "fronts", denying their and other, valid Black owned MBE non union firms, their rights to participate in the physical building and profits of the local Light Rail Rapid Transit Construction Project, as sub-contractors, as required by Federal Law.

108. That plaintiff alleges that he called Defendant, Native American Construction Co., on the 6th day of February, 1981, and asked the President, Dean Williams, what type of contract did his company have with John W. Cowper Co., and that Mr. Williams, stated that their contract, was to install re-bar.

109. That Plaintiffs allege that Native American Construction Co.'s contracts with Defendant, John W. Cwper Co., is listed as a supply contract and not a service or subcontract, as stated by Mr. Williams, on February 6, 1981.

110. Plaintiffs allege that Defendant, John W. Cowper Co., reported awarding a total of $1,445,913.23 of its MBE contracts to paper MBE suppliers, and $552,639.23 of its contracts to MBE services contractors, with $400,000.00 of said services amount, admittedly being awarded to an invalid MBE, which substantiates Plaintiffs' claims that Defendant, John W. Cowper Co., entered into contracts with invalid

MBEs and fraudulently deprived their firm of their right and requests to participate in the building and profits of the Project, as a bona-fide, valid minority prime contractinf non-union firm , thus to conform to union agreement, not to hire non-union construction contractors, and to continue their lock - out against Plaintiffs.

111. Plaintiffs allege that Defendant, Fruin Colnon / Traylor Brothers, did enter into contracts with a local invalid minority "front" company, that was set up by local union #210, representative Ronald Fino,- Onyx Construction and Equipment Company for $5,439.116.17 , which substantiates Plaintiffs' claims that Defendants, Fruin Colnon/Traylor Brothers, entered into contracts with invalid minority business enterprises, to deprive theri non - union prime contracting firm, of their rights to participate in the building and profits of the project, as a non - union prime contractor, and to conform to union agreements, not to joint venture with, or

hire non - union construction contractors, and to continue their lock - out against Plaintiffs.

112. That Plaintiffs allege that Defendants, NFTA, did certify Onyx Construction and Equipment Co., as a valid minority enterprise, allegedly as a favor to the local labor union #210, for their assisting and signing agreements, with other local construction unions, not to strike the local Light Rail Rapid Transit Construction Project.

113. That Plaintiffs allege that Defendants, Fruin Colnon / Traylor Brothers, did, after not being able to continue their contract with their local minority "front" company, Onyx Construction and Equipment Co., hired another non - local minority "front" company, to replace Onyx; (L & W Concrete).

114. That plaintiffs allege that Defendant, L & W Concrete, is nothing more than a minority paper "front" company, that was set up to "front" for majority contractors,

thus to circumvent federal laws, and to deprive bonafide minority construction contractors of their rights, to participate in the building and profits of the public construction industry, that is mandated, by federal law.

115. That Plaintiffs allege that James Lyles, President of L & W concrete, is a partner in AirwaY construction, of Baltimore Maryland, of which, Mr. William Burgess, is President and Administer of said Airway Constrfuction Company.

116. That Plaintiffs allege that, upon information and beleif, L & W (N & W) Concrete is no longer in business, and that the company folded, in November 1979, (bankrupt).

117. That Plaintiffs allege, that upon information and belief, Mr. Lyles, the President of L & W Concrete, is in trouble with the Internal Revenue, for setting up "front" companies and not paying federal taxes and

that Mr. Lyles, cannot sign any valid contracts, because of many outstanding liens, that forced his L & W (N & W) Concrete to be folded.

118. That Plaintiffs allege that L & W Concrete, is not active, relative to its major prime contract with Fruin Colnon /Traylor Brothers and Onyx Construction and Equipment Co., which total $5,439,116.17.

119. That Plaintiffs allege that Defendants, Fruin Colnon / Traylor Brothers reflected awarding $682,968.15 in supply and trucking contracts to Defendants Down town Dump Truck Service.

120. That Plaintiffs allege that Defendant, Down Town Dump Truck Service is a union - controlled trucking company, set up by union Freeway Construction Company, representative,using one of their original truck drivers, Paul Harrison, as their trusted "front" man.

121. That Plaintiffs allege that this scheme, was perpetrated, to deny valid MBE Trucking firms, the opportunity to negotiate profitable, valid trucking contracts, with local prime construction contractors, who are participating on the Project.

122. That Plaintiffs allege that Defendants, Fruin Colnon / Traylor Brothers, reported to Defendant, NFTA, awarding Defendant, Tresco Distributions Inc., $75-,648.60 in supply contracts, which is reflected, as being owned 51% : 49% by Minority : Majority persons.

123. That Plaintiffs allege that Tresco Distributions Inc. is not operated and controlled byminority persons, in its every - day operations, by their principal, Edward Coles, and is housed in Frank Parlato's (a local attorney) office, as a cover and protection to their true business venture.

124. That Plaintiffs allege that, upon information and belief, Tresco Distributions

Inc. is nothing more than a paper "front" company and has no supply yard or facilities, from which to administer their contracts, and this was a known fact to Defendants, NFTA, and Fruin Colnon / Traylor Brothers and Onyx Equipment and Construction Co., at the time of certification and hiring.

125. That Plaintiffs allege that Defendants, Fruin Colnon / Traylor Brothers and Onyx Equipment and Construction Co., awarded a $32,519.36 contract to Amiga Construction So., another minority "front" compant, whose certification, was revoked on June 18, 1979, by Defendant, NFTA.

126. That Plaintiffs allege that Defendants, Fruin colnon / Traylor Brothers and Onyx Equipment and Construction Co., awarded a $37,780.00 contract to Humes Contracting Company another minority "front" company, whose MBE status was rescinded, by Defendant, NFTA, on February 7, 1980.

127 That Plaintiffs allege that Defendants, Fruin Colnon / Traylor Brothers and Onyx Equipment and Contruction Co., awarded a $164,522.01 supply contract to Defendant, Universal Equipment Supply and Construction Co., that is a paper "front" minority supply company, that was set up by Mr. Oscar Rayford, to "front" for white supply and construction firms, for less than an overhead and profitable fee.

128. That Plaintiffs allege that Universal Equipment Supply and Construction Co., does not have any facilities, or hired personnel, to administer their contract, other than Defendant, Seigfried Construction Co.'s equipment yard.

129. That Plaintiffs allege that Defendant, Herbert F. Darling Inc., reported awarding a $1,883,440.00 contract, to Native American Construction Co., an Indian union company, so as to deprive Plaintiffs' Black non - union firm of a major

requested contract, and to conform to local union agreements, not to hire non - union construction contractors.

130. Plaintiffs allege that,upon information and belief, Universal Equipment Supply and Construction Co., received one per cent, for their supply contract with Defendant, Fruin Colnon / Traylor Brothers and Onyx Equipment and Construction Co., and Seigfried / Slattery Associates.

131. That Plaintiffs allege that Universal Equipment Supply and Construction co., should have earned, in overhead and profit, a minimum of 15% as published in Dodge Manual via Construction Management World, for their supply contract.

132. That Plaintiffs allege that upon information and belief, AFTCO International Trading Company, accepted a half per cent, for their supply contract, with S &M McHugh and Kenny.

133. That Plaintiffs allege that AFTCO International Trading Company should have earned 15% minimum, in overhead and profit, as pubished in Dodge Manual via Construction Management World, for their supply contract.

134. That Plaintiffs allege that this action, taken by all named Defendants, circumvented Federal Law, caused financial harm to their valid minority business, which exerted many efforts to participate in the building of the Project, thus causing undue financial hardship and suffering, to Plaintiffs and other valid minority business enterprises,through blatent violations of Plaintiffs and other local non - union minority contractors and labors' civil and constitutional rights, to participate in the building of the Project.

135. Plaintiffs allege that Oscar Rayford of Universal Equip. Supply and Construction Co. admitted that he did in fact act

as a "front", in obtaining a supply contract from Defendants, Seigfried/ Slattery Associates, and for Defendants, Fruin Colnon/ Traylor Brothers and Onyx Equipment and Construction co., "to take care of his family".

136. That Plaintiffs allege that Defendnats, NFTA, UMTA and NYS DOT, fraudulently accepted many paper "front" companies, as valid minority enterprises, without giving any consideration, to sasisting Plaintiffs' valid non - union minority construction firm, in the obtaining of construction contracts on the Project, to conform to union agreements not to hire non - union contractors, and to continue their discrimination against plaintiffs.

137. that Plaintiffs allege that many of the minority " front" companies, that are listed as participating MBEs with major and sizable contracts, have no forwarding addresses, or places of business, to administe any sort of business.

138. That Plaintiffs allege that Defendants, use the scheme of hiring phoney minority "front" companies, to circumvent Federal Law, defraud the Federal Government, and to deprive their and other valid MBEs of their rights to participate in the mainstream of the activities and the profit, that derive from such participation.

139. that Plaintiffs allege that, all participating prime contractors, use phoney MBE supply contracts, as the major portion of their MBE compliance, so as to deprive valid MBE non - union contracting firms, of their rights, to physically participate in the building and the profits of the Project, and to conform to union agreements, not to hire any non - union contractors on the Project.

140. Plaintiffs allege that, upon information and belief, all of the non - local participating MBE firms are paper "front" phoney companies, set up by the principals,

of said companies, for the sole purpose of entering into public construction contracts, with white majority firms, for less than overhead and profit fees, to circumvent Federal Laws, and to defraud the Federal Government, and deprive valid minority business enterprises, of their rights to participate in the building and profits of the public construction industry, thus causing undue, financial hardship and suffering to plaintiffs and other local non - union minority contracting firms.

141. Plaintiffs allege that none of the out - of - town companies' minority principals, control or maintain an on-going office, that is listed on the List of Participating MBEs and do not act in any physical capacity, what-so-ever, pertaining to their contracts on the local Light Rail Rapid Transit Construction Project.

142. That all Defendant / Prime Contractors negotiated and executed invalid "paper" contracts, so as to fraudulently receive MBE's share of the gross revenue and

profits , cicumvent Federal Law, conform to union agreements, and to fraudulently meet the established MBE percentage goals, so as to deny Plaintiffs and other bonafide minority non - union contracting firms, of their rights to participate in the physical building and profits of the Project, as required by Federal Law, upon accepting the Grant.

143. That all Defendant / Prime Contractors did, knowingly, intentionally, deliberately and willfully, deny Plaintiffs' and other local minority non - union contracting firms' their rights to participate in the physical building of the local Light Rail Rapid Transit Construction Project through fraudulent reports of awarding major supply and service contracts to many "front" MBE firms.

144. That Plaintiffs allege that this awarding criteria, clearly establishes the fraudulent patterns, that are used by all Defendants, to exclude available known local non - union, minority contracting firms, through

the use of phoney paper minority "front" supply contracts and out-of-town invalid MBE contracting firms, and is case for numerous civil class actions against Defendants, by local valid minority non-union construction firms and laborers.

SECOND CAUSE OF ACTION

145. That Plaintiffs repeat and reallege all the allegations set forth in paragragraphs 1 through 144 inclusively, as if fully set forth, in length, herein.

146. That Defendant, NFTA, has contended, that New York State Law and union agreements, do not allow set - asides, waiving of bondings, the acceptance of stage bonding, with special emphasis, or assistance to minority contractors in the local public construction industry; and that meeting the minority participation goals, at a later date, is all that is required.

147. That, with special emphasis, Plaintiffs' initial bids superceded all participating minority "fronts" and valid business enterpriess' bids or effots to participate as prime contractors on each of the Cut and Cover contracts on the local Light Rail Rapid Transit Construction Project, and that there is no lawful defense to Defendants, for their actions against Plaintiffs.

148. That Defendants' argument runs in direct conflict with the MBE funding agreement between Defendants, NFTA and UMTA and Circular 1165.1 , which states that, in furtherance of Plaintiffs' rights, as a socially and economically dis-advantaged, minority business enterprise, in the construction industry, with special emphasis, setasides and / or assistance will be made by Grantee, to minority construction firms, seeking to participate in UMTA - federally - funded Projects, as a condition in receiving the Grant.

THIRD CAUSE OF ACTION

149. That Plaintiffs repeat and relllege all the allegations set forth in paragraphs 1 through 148 inclusively, as is fully set forth , in length, herein.

150. That with special emphasis, Plaintiffs allege, that no valid, non-union minority construction contractors are participating on the Project, in any capacity and that Defendant,NFTA certified many, valid non - union contractors, with no intent of awarding or assisting any of the non - union firms, in obtaining contracts on the Project.

151. That Defendant, NFTA, deliberately, omitted reflecting any known non-union construction contractors in their MBE Program, to UMTA, but did recite 16 procedures that they would use, to guarantee valid minority contracting firms' participation in the building of the Project.

WHEREFORE, Plaintiffs demand judgements against the Defendants as follows:

1. That on Plaintiffs' First Cause of action, Plaintiffs requests that the Court, immediately halt and restrain Defendants from further discrimination and violation of plaintiffs' rights, and order The Defendant, NFTA, to award a construction manahers' contract to Plaintiffs, over all the Cut and Cover contracts, in accordance with established current Estimating manuals, reflecting costs, together with tetoactive profit payments of 5% and 20% equipment costs, that would have been minimal gross profit and gains that would have been realized, by Plaintiffs, had Plaintiffs been awarded their contract rights.

2. That Plaintiffs further request that the Court order Defendnats Fruin Colnon/ Traylor Brothers to disband their minority " front " companies; namely, Onyx Equipment and Construction Co., and L & W

Concrete and award a joint venture prime contract, to Plaintiffs, in accordance with Plaintiffs' contract request of Defendants Fruin Colnon / Traylor Brothers, together with retroactive payments of 5% profit and 10% equipment costs, that would have been the minimal gross profits, realized by Plaintiffs, had Plaintiffs been awarded their requested, valid joint venture prime contract with Defendant, Fruin Colnon/ Traylor Brothers.

3. That on Plaintiffs Second Cause of Action, and in the alternative, in the event that the court holds than an award of a construction managers' contract over the Cut and Cover contracts cannot be had, at this stage, that the Court, then grant, to Plaintiffs a money / damages judgement against Defendants, in the sum of fourteen Million, Three Hundred Sixty thousand, Three Hundred Seventy One Dollars and Fifty Cents, $14,360,371.50), in actual damages, together with punitive money damages, in the sum of Fifty Million Dollars ($50,000,000.00) for

the personal humiliation, great financial suffering, inconvenience, mental anguish and the willful, fraudulent and collective denial of Plainitffs' civil, constitutional and legal rights to participate in the building nd profits of the local Light Rail rapid Transit Construction Project, as a local, valid minority prime contractor, totalling Sixty Four Million, Three Hundred Sixty Thousand, Three Hundred Seventy One dollars and Fifty Cents , (64,30,371.50.

4. That on Plaintiffs' Second Cause of Action, and in the alternative, in the event that the Court holds than an award of a joint venture, with Defendants,Fruin Colnon / Traylor Brothers, cannot be had, at this stage, that the Court grant to Plaintiffs , a money / damage judgement, against Defendants, Fruin Colnon / Traylor Brothers, in the amount of One Million, Twenty Four Thousand, Sixty Three Dollars , ($1,024.063.00) , in actual damages, together with punitive money damages, in the sum of Three Million, five Hundred Thousand dollars,----------($3,500,000.00),

totalling Four Million, Five Hundred Twenty Four Thousand, Sixty Three Dollars ($4,524,063.00), for personal humiliation, great financial suffering, inconveniences, mental anguish, and the willful denial of Plainitffs' civil and constitutional rights, to participate in the construction of Contract #100011 , as a valid minority prime contracting firm.

5. That Plaintiffs further request that the Court order the United States Justice Department, launch an immediate investigation into all alleged criminal conspiracy, organizational wrong - doings and civil rights violations, by Defendants , against Plaintiffs, and other local, valid non - union minority construction firms.

6. That Plaintiffs have judgement, for costs, disbursements, and attorney fees for this action, together with, such other further relief, as the Court may deem just and

proper.

BY: Walter L. Jones
WALTER L. JONES, As
Attorney Pro se
Walter L.Jones,
personally and as owner
of Walter L. Jones
Development Corporation,
Inc.
475 Statler Building
Buffalo, New York 14202
(716) 854-8526

BY: John L. Hargrave, Sr.
JOHN L. HARGRAVE, SR.
Attorney - at- Law
Acting as Counsel for
Walter L. Jones Develop-
ment Corporation, Inc.
Office and Post Office
Address:
448 Franklin Street
Buffalo, New York 14202
(716) 884-2606

DATED: March 30, 1981
Buffalo, New York

APPENDIX H

PLAINTIFF JONES' LETTER TO JUDGE ELFVIN

DATED MAY 26, 1981

An Equal Opportunity Employer

WALTER L. JONES DEVELOPMENT CORPORATION
GENERAL CONTRACTORS
A Minority Owned Corporation
CONSULTANTS

475 STATLER BUILDING . BUFFALO, N.Y. 14202
408 BROADWAY . BUFFALO, N.Y. 14204
TELEPHONES: 854-8526 - 854-8528

May 26, 1981

Hon. Judge John T. Elfvin
U. S. District Court
U. S. Courthouse
Buffalo, New York 14202

Re: CIV 80-1075E
WALTER L. JONES DEVELOPMENT CORPORATION INC.
-vs-
NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL

Dear Judge Elfvin:

This letter is to inform you that I have releases attorney John L. Hargrave, Sr., as the attorney for the Corporation in the above captioned action and am respectfully requesting that you grant a continuance and stay of proceedings for thirty (30) days, to allow for the Corporation to acquire new, non-local conusel and time for said attorney to review and familiarize himself with this case.

As a matter of record, I released attorney Hargrave, for not following your direction to supply an affidavit, along with interrogatories, needed to oppose Defendants' motion to dismiss, and further his refusal to act responsible to me, as the Corporation's stock holder.

There are numerous interrogatories that must be responded to, in opposition to Defendants' motion to dismiss.

Judge Elfvin, the reason for my instituting this suit, without counsel, from the beginning, is because, no local counsel will represent me or the Corporation against the local construction unions in an ethical responsible manner, whereby most will not accept this meritorious case. The reasons are as follows: the local public heavy construction industry has been and is controlled and monopolized by the local construction unions and their contractors, whereby most attorneys wont oppose said unions, or contractors in any manner.

These above mentioned circumstances should allow for me to represent my closely-held corporation's interests, in this action; in the interest of justice.

I am further respectfully requesting a change of venue from this state, due to the local situation and climate, regarding a valid minority non-union construction contractor's opposing the local construction unions' dominating influences over the local legal community, politics, agencies and union construction contractors.

Your response is respectfully requested.

Yours very truly

WALTER L. JONES, President
WALTER L. JONES
DEVELOPMENT CORP., INC.

CC: Hon. Judge Maxwell
John L. Hargrave
Attached Distribution Sheet

NOTE: Enclosed please find a recent proposal/ settlement letter sent to the Chairman of the NFTA.

WLJ:pj
Encs.

APPENDIX I

JUDGE ELFVIN'S LETTER
RESPONDING TO PLAINTIFF JONES
DATED MAY 26, 1981

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
BUFFALO, N. Y. 14202

CHAMBERS OF
JUDGE JOHN T. ELFVIN

May 26, 1981

Mr. Walter L. Jones, President
Walter L. Jones Development Corporation
475 Statler Building
Buffalo, N. Y. 14202

re CIV-80-1075E - Walter L. Jones
Development Corporation Inc.
v. NFTA, et al.

Dear Mr. Jones:

I have your letter of the 26th, hand delivered to me in court this morning, in which you advise that the corporation of which you are the president has discharged John L. Hargrave, Sr., Esq., as the corporation's attorney in this case. You ask for a thirty-day delay of all proceedings so that you may obtain other counsel for the corporation.

While your request is an unusual one, I will accede to it in this situation and will hold all matters in abeyance until June 26, 1981. If by that date the corporation has not secured new legal representation and such other counsel has not formally appeared in the case (which will require a formal stipulation signed by the new counsel, by Mr. Hargrave and by you on behalf of the corporation the dismissal of the corporation's action for failure to prosecute will be seriously considered.

I note that the reasons you give for having released Mr. Hargrave is that he did not follow my direction in supplying an affidavit along with interrogatories which were needed to oppose the defendants' motion to dismiss. Certainly such reasons, if ture, are adequate reason for dismissing him. You note further, however, that an additional reason was his refusal to act and be responsible

to you as the corporation's stockholder. This may not be a good reason and I do suggest to you that any attorney who is worth his fee must be allowed to work in an objection fashion. He is the one who is trained in the law and it is he who must decide whether certain procedures can be followed. Obviously in all of this he keeps the client and the client's officers fully apprised and does his best to accommodate their desires. Nevertheless the bottom line is that he cannot serve you well unless he is allowed to act with some independence.

You further ask for a change of venue of this trial to some place outside of the state of New York and you cite the local situation and climate regarding a valid minority non-union construction contractor's opposition to the local construction unions' dominating influences all over the local legal community, etc. In the first instance, it is impossible to move this case to any point outside of the Western District of New York and I presently see no reason to remove it from Buffalo. Obviously I do not foreclose any arguments your new counsel may make in this regard but I think you are seeing trouble where none exists and I, for one, would anticipate that there would be no trouble in disposing of this matter here with a complete absence of bias and of prejudice.

I shall await your further advice or, more importantly, the aforementioned word from your new counsel and I do emphasize that you run a strong risk of having the corporation's action dismissed for failure to prosecute if nothing is done on or before June 26, 1981.

Very truly yours,

JOHN T. ELFVIN

APPENDIX J

PLAINTIFF JONES' LETTER
TO ATTORNEY DAVIS
DATED JUNE 16, 1981

An Equal Opportunity Employer
WALTER L. JONES DEVELOPMENT CORPORATION
GENERAL CONTRACTORS
A Minority Owned Corporation
CONSULTANTS
475 STATLER BUILDING . BUFFALO, N.Y. 14202
408 BROADWAY . BUFFALO, N.Y. 14204
TELEPHONES: 854-8526 - 854-8528

June 16, 1981

Mr. Charles L. Davis, Esq.
Attorney & Counselor at Law
1709 Statler Building
Buffalo, New York 14202

Re: Civil action #80-1075E
Walter L. Jones development
Corp., Inc. vs. N.F.T.A.
et al

Der Mr. Davis:

This letter is to confirm our retainer agreement, with respect to the above captioned case which you agree to prosecute and colelct the judgment.

Herewith please find the entire file, with respect to this case for your review and information, together with copies of my original complaint and amended complaints.

I amended the complaint, with leave of the court on February 20, 1982 and added the contractors and nine union defendants and their officers, after receiving a memorandum from attorney C. Donald O'Connor of the U.S. Attorney's office dated February 5, 1981, wherein he described the contractors and unions as indispensable parties to this action, which is enclosed in the file, also for your review; together with my motion for preliminary injunction filed on February 20, 1981, with my amended complaint.

I further amended the complaint with leave of court on April 3, 1981 after hiring attorney John L. Hargrave Sr., to assist me in this case and further added the purported minority fronts due to our considering the minority fromts being also material to this case.

The court thereafter issued a memorandum and order on April 22, 1981, directing that the complaint, as to me individually, was dismissed and ordered that I hire an attorney to prosecute the action on behalf of my corporation; which I appeale on or about May 1, 1981, which is still pending.

The files contain all of the above referred to documents including all motions, affidavits and memorandums from the defendants in this case for your information and review, whereupon I am requesting that you prosecute this action against all the defendants, as included in my and attorney John L. Hargrave's amended and supplemental complaints dated March 30, 1981 and filed on April 3, 1981.

Very truly yours,

Walter L.Jones, President
Walter L.Jones Development
Corp., Inc.

WLJ:pj
cc: file

APPENDIX K

JUDGE ELFVIN'S ORDER,
SUBSTITUTING CHARLES L. DAVIS
AS ATTORNEY OF RECORD
FOR CORPORATION
FILED, ON JUNE 24, 1981

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES DEVELOPMENT CORPORATION, INC.

PLAINTIFF ORDER
CIV 80-1075E

-vs-

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL

DEFENDANTS

IT IS HEREBY ORDERED, that John L. Hargrave, Sr., Esq., be permitted to withdraw as attorney of record for the Plaintiff, Walter L. Jones Development Corporation, Inc., and that attorney Charles L. Davis, Esq., be substituted as attorney of record, and

IT IS FURTHER ORDERED, that in lieu of service upon the office of John L. Hargrave, Sr., 448 Franklin Street, Buffalo, New York 14202, all Defendants shall hereafter and until further notice, serve all papers in this action on the Plaintiff's new attorney, Charles L. Davis, Esq., at his Post Office Address, 1709 Statler Building, Buffalo, New York, 14202, in any proper manner authorized by law.

G R A N T E D

HON. JUDGE JOHN T. ELFVIN
Buffalo, N. Y.
24, 1981

APPENDIX L.

PLAINTIFF JONES' LETTER
TO CHARLES L. DAVIS
DATED JUNE 26, 1981

An Equal Opportunity Employer

WALTER L.JONES DEVELOPMENT CORPORATION
GENERAL CONTRACTORS
A Minority Owned Corporation
CONSULTANTS
475 STATLER BUILDING . BUFFALO, N.Y. 14202
408 BROADWAY . BUFFALO, N. Y. 14204
TELEPHONES: 854-8526 - 854-8528

June 26, 1981

Mr. Charles L. Davis, Esq.
Attorney & Counselor at Law
1709 Statler Building
Buffalo, New York 14202

Re: Walter L. Jones
Development Corp. Inc.
vs. NFTA, et al
Civ No. #80-1075E

Dear Mr. Davis:

This letter is to confirm our conversation, with respect to our discussion of yesterday in your office, where you stated that the unions and the minority fronts should be dropped from the above law suit.

Please be advised that the unions are the main conspirators to this action due to their monopolistic agreements with defendant prime contractors and defendant UMTA, that enforced deprivation of my corporation's non union rights to obtain contracts on the local Light Rail Rapid Transit Construction Project, as the documents submitted to you show.

I am therefore demanding that you do not drop the unions from this case under any circumstances.

Very truly yours,

Walter L. Jones, President
Walter L.Jones Development
Corp. Inc.

WLJ:pj
cc: file

APPENDIX M

ATTORNEY CHARLES L. DAVIS'
LETTER TO JUDGE ELFVIN
DATED JUNE 26, 1981

Law Offices of
Charles L. Davis, Esq.

(716) 856-3812

1709 Statler Building
Buffalo, New York 14202

June 26, 1981

Hon. Judge John T. Elfvin
United States District Court
Western District of New York
U.S. Courthouse
Buffalo, New York 14202

Re CIV 80-1075E

Dear Judge Elfvin:

Please be advised that I have been retained to represent the Walter L. Jones Development Corporation, Inc.

I have submitted a Substitution of Attorney form, signed by you on June 24, 1981, and the same has been mailed to all Defendants, by the Court Clerk.

I have begun a review of the pleadings in this case and it is immediately apparent that the Complaint and Interrogatories must be amended. In that regard, I am preparing a Motion to Amend the Complaint and Interrogatories.

We are also requesting new discovery schedules and appropriate time to amend the pleadings.

I am thanking you in advance, for your anticipated co-operation.

Yours truly,

Charles L. Davis

CLD:pj
cc: Magistrate Maxwell
Walter L.Jones

APPENDIX N

MOTION TO AMEND COMPLAINT
PREPARED AND FILED BY CHARLES L. DAVIS
ON JULY 1, 1981

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES DEVELOPMENT CORPORATION, INC.

PLAINTIFF

-vs-

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL

DEFENDANTS

CIV 80-1075E
NOTICE OF MOTION TO AMEND THE COMPLAINT

PLEASE TAKE NOTICE, that upon the annexed affidavit of Charles L. Davis, attorney for the above nemed Plaintiff, sworn to this 1 day of July, 1981 and the exhibits attached hereto and upon all the pleadings and proceedings heretofore had .

Plaintiffs, at 9:00 A.M. on July 13, 1981 , at the United States District court, Buffalo, New York, before the honorable John T. Elfvin, will move the Court for leave to Amend the Complaint and to consolidate all Interrogatories under the label of Plaintiff's Amended Interrogatories and to serve the Amended Pleadings on the Defendants left in the case and for such other and further relief as this Court

deems just.

Dated: July 1, 1981

CHARLES L. DAVIS
1709 Statler Building
Buffalo, New York 14202
(716) 856-3812
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES DEVELOPMENT CORPORATION, INC.

PLAINTIFF

-vs-

CIV80-1075E
AFFIDAVIT

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL

DEFENDANTS

STATE OF NEW YORK)
COUNTY OF ERIE) SS
CITY OF BUFFALO)

CHARLES L. DAVIS, being duly sworn, deposes and says:

1. That he is an attorney, licensed to practice in the State of New York, and is representing the Plaintiff in the above action.

2. That Plaintiff is moving to amend the Complaint because he is new counsel and the Plaintiff drafted his own pleadings.

3. That your Deponent is reviewing the pleadings and believes that he can narrow the issues and clarify factual allegations therein.

4. That all Interrogatories then would be directed at the issues pleaded, within the Amended Complaint.

5. That your Deponent believes that certain defendants may be ommitted as parties to this action and that more definite statements of the claims will be made against the remaining Defendants.

6. That your Deponent believes that such an amendment would be in the interest of justice and would expedite the prosecution of this case.

7. That the new attorney of record, would need at lease thirty (30) days to thoroughly review the pleadings, research the law and make the appropriate ammendments to the Complaint and Interrogatories.

8. That Plaintiff is requesting, pursuant to Rule 15 (a) of the Federal Rules of Civil Procedure, leave to amend its Complaint, which may be granted by Court Order.

WHEREFORE, Plaintiff prays that the Court grant an Order, allowing Plaintiff to amend its Complaint and Interrogatories, set a new date for any Amended Motions to Dismiss and set a new schedule for discovery, and for such other and further relief as the Court deems just and proper.

DATED: July 1, 1981

CHARLES L. DAVIS
Attorney for Plaintiff
1709 Statler Building
Buffalo, New York 14202
(716) 856-3812

SWORN TO BEFORE ME THIS 1st
DAY OF JULY, 1981

LINDA L. CLEVELAND
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1983

APPENDIX O

ORDER DRAFTED FRAUDULENTLY BY
CHARLES L. DAVIS, AND SIGNED BY
JUDGE ELFVIN, ON JULY 16, 1981
GRANATING LEAVE TO AMEND COMPLAINT

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES DEVELOPMENT CORPORATION, INC.

PLAINTIFF

-vs-

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL

DEFENDANTS

UPON READING AND FILING the Plaintiff's Notice of Motion, together with supporting affidavits of Plaintiff Walter L.Jones, President of Walter L.Jones Development Corporation, Inc. and the supporting papers annexed thereto, and the matter having duly come on to be heard in this Court on July 13, 1981, and the Defendants having appeared at such time by their named attorneys on the record, and after hearing Charles L. Davis, attorney for the Plaintiff, in support of said Motion,

IT IS HEREBY ORDERED that Plaintiff be allowed to amend his complaint and to serve the same no later than August 7, 1981, and it is ordered tht the Motion to Dismiss shall be argued August 17, 1981 with the Defendants arguing with

the same papers heretofore submitted with any additional points as warranted by the amended pleading.

HON. JUDGE JOHN T. ELFVIN
Buffalo, N.Y.
July 16, 1981

UNITED STATES DISTRICT COURT OF THE WESTERN DISTRICT OF NEW YORK

Index No.
Year 1981

WALTER L. JONES DEVELOPMENT CORPORATION, INC.

Plaintiff

-vs-

ORDER
CIV 80-1075E

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL

Defendants

CHARLES L. DAVIS, ESQ.
Attorney for Plaintiff

Office, Post Office Address and Telephone
1709 STATLER BUILDING
BUFFALO, NEW YORK 14202
(716) 856-3812

Personal Service of the within and of the notice (if hereon endorsed, is admitted this day of , 19

.....
Attorney(s) for

NOTICE OF ENTRY

SIR: Please take notice that an of which the within is a copy, was duly granted in the within entitled action on the day of , 19 , and duly entered in the office of the Clerk of the County of on the day of , 19

To
Attorney(s) for

CHARLES L. DAVIS, ESQ.
Attorney for

APPENDIX P

AMENDED COMPLAINT, DRAFTED AND FILED
BY ATTORNEY CHARLES L. DAVIS
ON AUGUST 7, 1981

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

WALTER L. JONES and
WALTER L. JONES DEVELOPMENT CORPORATION, INC.
475 STATLER BUILDING
BUFFALO, NEW YORK 14202

Plaintiffs

AMENDED COMPLAINT
Civ - 80-1075E

vs.

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA)
181 Ellicott Street
Buffalo, New York 14205

James H. Wolford - George L. Wessel -
Richard C. Southard - John F. Downing
William G. Gisel - John F. Kopczynski -
William H. Wendel - Chester R. Hardt -
George J. Trimper - Alfonso V. Gellanca
William E. Straub - Jacob F. Schoellkopf V
James E. Kelly

AND

URBAN TRANSPORTATION ADMINISTRATION (UMTA)
400 7th Street S.W.
Washington, D.C.

Brock Adams - Jose Camallonga
Richard S. Page - Harold B. Williams

AND

NEAL CAVANOUGH and SIEGFRIED CONSTRUCTION CO., INC.
3980 Sheridan Drive
Buffalo, New York 14224

AND

JOHN SANDERS and SLATTERY ASSOCIATES, INC.
46 54th Road
Maspeth, New York 11378

AND

HERBERT F. DARLING and HERBERT F. DARLING, INC.
131 California Drive
Williamsville, New York 1422

AND

IRVING FRANCIS and JOHN W. COWPER CO. INC.
4246 Ridge Lea Road
Amherst, New York 14240

AND

S.H. BARTHOLOMEW and FRUIN COLNON/ TOM TRAYLOR/
TRAYLOR BROS., WILLIAM STERLING and ONYX
CONSTRUCTION & EQUIPMENT CO.
1706 Olive Street
St. Louis, Missouri 33103

Defendants

JURISDICTION AND VENUE

1. In this individual action for declaratory relief, injunctive relief and damages to redress the deprivation of rights secured to the Plaintiss by 49 C.F.R. Part 23 and as amended, Executive Order 11, 246 as amended (30 F.R.1231 a), 42 U.S.C.A §2000 (e) note, 42 U.S.C.A §1981, 42 U.S.C.A. §1983, U.S.C.A §553, §1 Civil Rights Act 1871, Title VI Civil Rights Act of 1964, 42 U.S.C. §2000 et. seq., 40 U.S.C. §471.486(a), 42 U.S.C. §6705 (f), (2), 28 U.S.C. §1331(a), United States Constitutional Amendment §14, 28 U.S.C. §1343 (3), 23 U.S.C. §128, 131, U.M.T.A. Circular 1165.1, 49 U.S.C. §1601 et. seq., §1602, 1604, (g)-(m), 41 C.F.R. Part 60-2, 6-250.5, 60 - 741.5, Urban Mass Transportation Act of 1964, §19 (Public Law 95 - 599), 42 U.S.C.A §1985.

2. This Court's jurisdiction is invoked to secure implementation of 49. C.F.R. Part 23, et al, as stated above, which mandates affirmative action on all Federal Government funded construction contracts, pursuant to 42 U.S.C.A. §2000(e) note, 2000(d), et. seq., et al. That Plaintiffs

invoke the Court's jurisdiction pursuant to the 13th Amendment to the U.S. Constitution, 42 U.S.C.A. §1981, providing for equal rights before the Law, 42 U.S.C.A. §1983 and the 14th Amendment to the U. S. Constitution, providing for redress of civil rights denied an individual on the basis of race, color, national origin, etc., under the color of State Law, 42 U.S.C. §1985, which provides relief from conspiracy to deprive persons of their civil rights. Jurisdiction of this Court is further invoked by the above cited statutes.

3. That the flagrant violations of the above laws are continuing, to date, within the Western District of the state of New York and are effectively depriving the Plaintiffs of their civil rights.

PARTIES

4. Plaintiff, WALTER L. JONES, is a black male citizen of the United States of America and a resident of Buffalo, New York. Plaintiff has been in the construction business for more than eleven (11) years, with sufficient experience to perform any general contracting work. Plaintiff is a prime contractor who is a self-taught construction engineer, having built a bridge for the County of Erie, reconstructed and remodeled residential and commercial buildings and constructed new buildings. That Plaintiff - Corporation was certified by Defendant, N.F.T.A. as a Minority Business Enterprise (M.B.E.) and is soley owned and operated by Walter L. Jones. Plaintiff's employees are primarily black, non-union employees. That Plaintiff has successfully low bid several construction contracts on the city of Buffalo's local Light Rail Rapid Transit Construction Project, which is funded by the Urban Mass Transportation Administration (U.M.T.A.), a division of the federal Department of Transportation (D.O.T.); however, no contracts have been let

to him or his company, solely because of his race and color. That Defendants have conspired, worked in unison, to deprive Plaintiffs of the rights afforded them by 49 C.F.R. Part 23.

5. Defendants, N.F.T.A. and its Policy Board and Executive Officers, (John F. Downing, James H. Wolford, George L. Wessel, Richard C. Southard, William G. Gisel, John F. Kopczynski, William H. Wendel, Chester R. Hardt, George J. Trimper, Alfonso V. Gellanca, William E. Straub, Jacob F. Schoellkopf V, James E. Kelly) are a local public Corporation co-ordinating transportation for Western New York, who are recipients of a D.O.T. / U.M.T.A. Grant to build for Buffalo, a light rail rapid transit system. N.F.T.A., as the recipient of said grant, contracted and agreed to take all reasonable steps to involve MBE's in all phases of contracting, to build said system. Defendants have failed to involve M.B.E. prime contractors by refusing to award Plaintiffs' a competitively won prime contract and refusing to implement 49 C.F.R. 23, as requested on several occasions, orally and in writing.

Defendants, U.M.T.S. and its officers Brock Adams, Jose Camallonga, Richard S. Page, and Harold B. Williams, a division of the D.O.T. created by the Urban Mass Transportation Act of 1964, have failed to implement, pursuant to 49 C.F.R. 23, affirmative action and ensure no discrimination on the basis of race, color or national origin, etc.

Defendants, Neal Cavanough, Siegfried Construction Co., John Sanders, Slattery Associates, Herbert F. Darling, Herbert F. Darling Co., Irving Francis, John W. Cowper Co., Inc., S. H. Bartholomew, Fruin Colnon/Tom Traylor and Traylor Brothers are all prime contractors who have been awarded prime contracts, and in conspiracy with the N.F.T.A, have denied prime contracts and subcontracts to Plaintiffs.

Defendants, William Sterling and the Onyx Construction and Equipment Co., did conspire against Plaintiffs in concert with Defendnats, prime contractors and N.F.T.A and presented itself as an M.B.E. After being awarded a contract as a M.B.E. joint venture prime partner, even though

no experience or track record existed for them, in construction, they were later discoverd and disclosed as being a M.B.E. "front". That Defendant William Sterling had no experience or background as a contractor: other than as a common laborer.

6. That Defendants, N.F.T.A. and U.M.T.A. are government agencies that are charged with the legal responsibility to implement 49 C.F.R. 23 and all parties contracting with either Defendant, as recipient, contractor or sub-contractor on the Light Rail Rapid Transit Project are especially responsible for implementation of affirmative action, equal protection (42 U.S.C.A. §1981), and maintaining a policy of non - discrimination because of race or color under the color of State Law, (42 U.S.C.A §1983)

ADMINISTRATIVE PROCEDURES

7. Within 180 days of the occurance of the acts in which Plaintiffs complained, they caused letter of complaint, pursuant to 49 C.F.R. 23.73 to be served on Mr. Brock Adams, Office of the Secretary - U.M.T.A., Said letters are dated

February 22, 1979, March 5,1971 and on May 17, 1979. On March 30, 1971 a complaint/ letter was sent to Harold B. Williams and on July 19, 1979 a complaint / letter was sent to Gary Gayton, both of U.M.T.A. complaining about discrimination and violation of Plaintiff' civil rights by the N.F.T.A. and local prime contractors.

8. That a cursory investigation was conducted, pursuant to 49 C.F.R. §23. and Harold B. Williams of D.O.T., indicated that N.F.T.A. was not in violation of regulations or Plaintiffs' rights in a June 29, 1979 letter and on August 19, 1971, he indicated that 49 C.F.R. 23.73's assistance is optional for the N.F.T.A. Thta on February 22, 1971, Mr. Jose Camallonga determined that Plaintiffs does not meet the criteria of being lowest responsible and responsible bidder and a letter from Richard S. Page on April 11, 1971, totally disregarded the provisions of 49C.F.R. §23, in holding that Plaintiffs had to acquire their own bonding and financing, without the N.F.T.A., and consequently all administrative assistance from D.O.T. /U.M.T.A. and apparently no administrative relief was or is

possible on contract 1Boo51 or for any contract; bid and won on later dates.

9. That consequently plaintiff commenced his action pro se to attempt to restrain defendants from further discrimination and to implement 49CFR23. That several amendments to the complaint was made and finally this amendment being the first by and through legal counsel.

Statement of Claim

10. That defendant N.F.T.A. has systematicly precluded the paticipation of MBE prime contractors in the construction of the Buffalo Rapid Transit. Specifically, it has refused to award several contracts (1B40021), (1B4032), (1B0031), (1B0011) low bidded outright by plaintiffs to his company. That plaintiffs have been denied all participation as a contractor or sub-contractor allegedly for lack of bonding, financing and experience. That even though plaintiffs have sufficient experience and expertise to perform the above contracts none have been let to plaintiff because of his race and color. N.F.T.A. has granted Joint Venture Prime Contracts to a MBE front Onyx Corporation who had absolutely no experience and a

very short cooperate existance. That plaintiff has had 11 years experience in construction, has built bridges, renovated houses and commercial buildings and built commercial buildings, but was refused participation as a Prime Contractor, and refused as a Joint Venture partner or as a sub-contractor. That defendant, N.F.T.A., refuses to follow the rules promulgated in 49CFR23 which states a National Policy advocating affirmative action in construction to help alleviate affects of past discrimination that barred MBE construction company's from entering the industry. That refusal to implement said regulations that have the force and effect of law pursuant sections cited herein, violates Civil Rights of Plaintiff. The said regulations that defendant refuses to implement are designed to helping plaintiff to overcome barriers to participation in government contracts.

That Defendant U.M.T.A. has refused to enforce 49CFR23 and has failed to take affirmative action to ensure that no person is discriminated against on the grounds of race or color in programs funded by U.M.T.A.

Defendants Officers of U.M.T.A. and N.F.T.A. have refused to implement and enforce said regulations pursuant to Statutory Law cited herein causing damage to plaintiff's Civil Rights.

Defendants Construction Company have conspired to violate plaintiffs rights by not awarding them sub-contracts but awarding said sub-contracts to MBE fronts and also failed to assist plaintiffs in bonding, financing or by way of Joint Venture Enterprise.

That failure to enjoin said conduct of the defendants will cause continuous and irreparable injury to the plaintiffs. The discriminatory practices of the defendants include, but are not limited to the following:

A. N.F.T.A. refusing to let prime contracts to MBE's denying equal protection of laws.

B. N.F.T.A. refusal to let to plaintiff prime contracts low bidded by said plaintiff in violation of Civil Rights under color of State Law.

C. N.F.T.A refusal to take all necessary and reasonable steps to ensure MBE participation as prime contractors to the maximum extent.

D. N.F.T.A. refusal to assist MBE financing, bonding and technical expertise.

E. N.F.T.A. failed to enforce Affirmative Action Policy, codified by this Nation in case and Statutory Laws, by utilizing Affirmative Action techniques to ensure participation of MBE's as prime contractors.

F. N.F.T.A. failed to set monitor and realize goals for each contract let and overall goals of the project regarding minority participation as prime and sub-contractors.

G. N.F.T.A. failed to describe MBE Programs as to prime and sub-contractors. Failed to describe how they will be implemented and/or enforced.

H. N.F.T.A. failed to properly certify MBE's and utilize them.

I. N.F.T.A. is discriminating on the basis of race and color in denying plaintiff's contracts.

J. U.M.T.A. refused to enforce 49CFR23 regarding it's prohibition against discrimination because of race or color

k. U.M.T.A. and it's officers refuse to use enforcement techniques and withdraw or withhold funds when recipient violates financing agreement.

L. Contractor defendants have failed to set and meet goals for minority participation in prime contracts by utilization of legitimate MBE's as sub-contractors.

M. Contractors defendants have conspired under color of state law in collusion with each other and N.F.T.A. and U.M.T.A. and refused to grant plaintiff a sub-contract of Joint Venture depriving plaintiff of Constitutional Rights.

N. That defendant Policy Board of N.F.T.A. has refused to make policy consistent with 49CFR23 and refuse to enforce the same causing harm and damage to plaintiff.

O. That defendant officers of U.M.T.A., BROCK ADAMS, RICHARD S. PAGE, JOSE CAMALLONGA and HAROLD B. WILLIAMS, have refused to enforce the terms of it's agreement with N.F.T.A. to plaintiff's detriment and violation of Constitutional Civil Rights and Regulations and Laws.

P. That defendant N.F.T.A. through it's counsel/agent have negotiated this claim with plaintiff and with plaintiff's counsel. Said agent has not negotiated in good faith towards resolution of this dispute. That defendants have not made any good faith effort to comply with requirements of 49CFR23 since this Complaint was initiated administratively. Nor have any steps been taken to afford plaintiff any opportunity to participate as a Prime Contractor.

WHEREFORE, Plaintiff respectfully prays this Court for the following relief:

1. Enjoin continued violation of Civil Rights under Color of State Law by way of Injunctive Relief to prevent defendant N.F.T.A. from awarding contracts (1B40021) and (1B4032) to anyone other than plaintiff's low bidder prior to a hearing thereon.

2. Order N.F.T.A. to honor its Affirmative Action Commitment made to U.M.T.A. as a condition to receiving Grants for construction of the local light rail rapid transit system by affording plaintiffs who are economically dis-

advantaged reasonable and necessary financial, bonding and technical assistance pursuant to 49CFR23.

3. Monetary relief by way of punitive and compensatory damages resulting from discriminatory conduct of defendants.

4. Order U.M.T.A. and their officers to withdraw and withhold funding of Buffalo Rapid Transit System pending N.F.T.A.'s compliance with regulation and Statutory Laws of this Nation regarding plaintiff participation as a M.B.E. Prime Contractor.

5. Retain jurisdiction over this action to assure full compliance with the law and all Orders of this Court and require defendant to file such report as the Court deems necessary to evaluate such compliance.

6. Grant plaintiff necessary cost and disbursements including a reasonable attorneys fee and such other and further relief as to the Court deemd just and proper.

Dated: August 7th, 1981

Charles L. Davis
1709 Statler Building
Buffalo, New York 14202
(716) 856-3812

APPENDIX Q

UNTITLED, AFFIDAVIT OF PLAINTIFF,
JONES, PREPARED AND NOTARIZED BY
ATTORNEY CHARLES L. DAVIS
ON AUGUST 19, 1981,
FILED ON AUGUST 20, 1981

UNTITLED
AFFIDAVIT

State of New York)
County of Erie)ss.
City of Buffalo

WALTER L. JONES, being duly sworn deposes and says:

1. That he is one of the Plaintiffs in the above-entitled Action.

2. That this Action was commenced by service of Summons and Complaint on Defendant on or about Nov. 21, 1980.

3. That this Action ws commenced to prevent Defendants, NIAGARA FRONTIER TRANSIT AUTHORITY (NFTA) and URBAN MASS TRANSPORTATION

ADMINISTRATION (UMTA), from continuing patterns and practices of discrimination based on race or color in the awarding of it's Government assisted construction contracts. Said contracts are being awarded for construction of the Light Rail Rapid Transit System for Buffalo, New York, primarily with Federal Government Grants from (UMTA). Said grants require Affirmative Action plans to be implemented and enforced by N.F.T.A. by taking "ALL NECESSARY and REASONABLE" steps to ensure known Minority Business Enterprise (MBE) participation in all contracting phases. The Plaintiff is certified by defendants as a (MBE) prime construction company, however, he has not been allowed to participate as a prime contractor nor as a Sub-contractor. That Plaintiff is denied participation on the pretext that he lacks the necessary bonding, financing and prior experience. The applicable Federal Regulations 49 CFR 23 and Executive Order 11,246 anticipated that such barriers existed and would prevent MBE participation due to PAST Discriminatory Practices which are historical in our Country. That said Regulations 49 CFR23 (Exhibit I) and NFTA Policy

statement (pages 51, 52, 90) (See Exhibit II attached) both have the force and effect of law when promulgated with the specific intent of over coming the past affects of racism in the construction industry by awarding grants to recipients with an Affirmative Action commitment and policy. Said policy is a statement that is required for each Federal Contract and Grant that is awarded and the same is incorporated into the sub-contracts and is legally binding on all parties. That defendant, N.F.T.A., refuses to implement it's Affirmative Action Plan, in that, it has no local MBE prime contractors and has refused to award and allow participation on contracts to the economicly disadvantaged Plaintiff, including those won outright in open competition. That defendant, N.F.T.A., has awarded the contracts won by Plaintiff to the second lowest bidder and refused to provide the necessary technical and financial assistance needed by the plaintiff and mandated by 49 CFR 23 and N.F.T.A.'s Policy statement. That contracts (1B4032 and 1B4021)) were low bidded by plaintiff and are presently primary subject of this Action and

are being awarded to the second lowest bidders, while this Action is pending and is effectively mooting plaintiff's cause of action as to obtaining his low bidded contracts pursuant to the Regulations and Practice.

4. That it's a matter of public record that WALTER L. JONES low bidded the above two contracts, but was determined not to be the lowest "responsive and responsible" bidder. That implementation of 49 CFR 23 could overcome said barriers by creating a joint venture or by providing financial, bonding and/or technical assistance, if his perclusion was based on the technical grounds intimated by defendant, N.F.T.A. Actually, the perclusion is based solely upon 49 CFR 23 addresses.

5. That said contract (1B4032) for construction at Summer/Best station was awarded to JOHN W. COWPER (See Courier Clipping 8/11/81 attached as Exhibit III). That if COWPER is allowed to perform this contract it would deprive the plaintiff of Constitutional and Civil Rights, that no adequate remedy at law is available to the plain-

tiff regarding this violation, Continuation of said violation would cause irreparable injury to plaintiff in that there are no other contracts on this project to be bidded or awarded. Plaintiff would not only be deprived of profits, but equal opportunity to participate.

6. That defendant, N.F.T.A, is obviously failing to perform under it's Federal government Grant pursuant to the dictates of Executive Order 11,246, and 49 CFR 23 in that:

a) Plaintiff has low bidded several contracts and has not yet been awarded a bid.

b) That no local valid MBE prime contractor has been awarded a contract on this project, although JONES has always been available and has made several attempts to participate directly with N.F.T.A. by way of joint venture or with contractors and sub-contractors, all to avail. (See attached Exhibit IV.)

c) That defendant, N.F.T.A., must necessarily be able to show that it has employes Affirmative Action Techniques bytaking all reasonable and necessary steps to overcome existing

barriers to MBE participation as prime contractors-barriers that were presumed and presupposed and known to exist which necessitated and precipitated implementation and enforcement of 49 CFR 23. Congress had ample proof to conclude that MBE's had traditionally and historically received a disproportionate amount of public contracts and that the use of traditional contracting practices would serve only to perpetuate this imbalance. MBE provisions are deemed a compelling governmental interest by Congress, various Federal Agencies by way of regulations and the President is determined by Executive Order, 11,246 et.al. in order to redress past racial discrimination against minority's through use of race-conscious remedies. This reflects a National Policy by our government.

d) There is no business necessity or any valid legal reason for not enforcing 49 CFR 23 and N.F.T.A.'s stated policy of assisting MBE's to overcome economic disadvantages"...to alleviate financial business faced by MBE's," in construction.

e) That plaintiff will prevail on the merits because defendants are clearly violating the applicable laws of this Nation that have been

codified and handed down by Case Law and is flagrantly without justification contravening the National Policies and Practices of this Nation.

7. That issuance of this Preliminary Injunction will not cause any substantial harm to anyone including the public. That said Injunction would serve Notice on N.F.T.A. and all other entities contracting with the Federal Government thta they must also obey this law just as the bank-robber, the kidnapper or the man using the Federal Communication Systems. On the contrary, thepublic at large will be benefited by the granting of this Injunction when they see that no individuals or agency is above the Constitution and the Law, and that all citizens can be afforded equal protection, equal oportunity and justice before the highest Law of the land, without regard to race or color.

8. That in cases of this nature affecting Federal Government Policy dating back to the Freedman's Bureau Act of 1866 14 Stat.173 which employed Affirmative Action techniques to right wrongs perpetrated against fromer slaves, it's in the interest of the public to enforce the law

against discrimination and to enforce the laws enacted to right the past affects of Four (400) Hundred years of discrimination of biased treatment against blacks. If the public interest is weighed solely and primarily against the interest of WALTER JONES, obviously, Mr. Jones will always be deemed a distant third. In other words, to continue construction of the Summer/Best or Allen/Main portions of the project, most likely will always be deemed as in the best interest of the public. However, we are dealing here with a much weighter proposition than the Civil and Constitutional Rights of one man. Mr. Jones is the Vanguard minority prime contractor in this area attempting enforcement of rules promulgated to benefit contractors with his problems. He is the Construction industries Thurgood Marshall, Jackie Robinson or Martin Luther King, attempting to open doors here never entered into before by black men. The issue is whether this Federal Court will perpetuate the Legacy of Unequal treatment, formerly known as slavery; the slave was noted by the U.S. Constitution, Article I,Section 2, as 3/5th of a man;

Dred Scott vs. Sanford 19 How. 393 (a slave is property); Jim Crow Laws,Plessey vs. Ferguson 163 US 537 known as the Separate but Equal Doctrine practiced as the separate but UNEQUAL DOCTRINE in facilities such as schools, suburban housing, jobs and the construction industry.

Or, will the Court follow the policies announced since the Freedman's Bureau Act, enforced to a greater extent since the Board of Education vs. Brown in 1953 opened equal education up to blacks. Granting a right to blacks with no remedy or enforcement provisions does not equal a Right. The applicable laws herein provide enforcement mechanisms for the Administrative Agency (UMTA). Failure to Act leaves the door open for Judicial Review. The reviewer must be mindful that the Legislators and Executive branches made efforts to rightwrongs and to more fully integrate our society, where the color of skin will not determine opportunity. If we closely examine the history of this country we immediately recognize and understand the need and justification for 49 CFR 23, and other anti-discrimination laws in existance today. So as the PUBLIC INTEREST IS considered, we see Mr. Jones

only as a symbol of where this country started from and where it is headed to socially, economically and politically. He stands for all that this Nation has been attempting to do by way of Affirmative Action for Minority's. In conclusion, The Public Interest is not weighed against WALTER JONES' interest but against the National Affirmative Action Policy of this Nation, codified by law by all three branches of the Federal Government, which represents the Will of the People, by the people for the people's interest -which is in the Interest of the Public that our laws are obeyed and enforced.

9. That plaintiff, WALTER JONES, in competitive bidding demonstrated the sufficient skill and knowledge of an estimating engineer to low bid contracts numbers 1B4021 and 1B4032 in which we are seeking to enjoin. (See attched Exhibit V). Work hs not been commenced on either of these above two contracts.

10. That previous contracts low bidded by the plaintiff are 1B0051, 1B0031, 1B0011 on this project and the work is near completion or completed in the case of 1B0031. (See Exhibit VI).

WHEREFORE, the plaintiff prayerfully and respectfully requests that this Honorable Court enjoin the defendants, N.F.T.A and U.M.T.A. from the followin conduct.

1. N.F.T.A. from awarding 1B0421 or proceeding on contracts 1B4032.

2. Enjoin U.M.T.A. from accepting the awarding of contract 1B4032 and enjoin N.F.T.A from awarding contract 1B4021.

3. Enjoin U.M.T.A. and/or N.F.T.A. from dispersing funds to contracts 1B4021, or 1B4032 until the hearing and judgment thereon.

4. Enjoin any further discriminatory conduct on the part of N.F.T.A. and U.M.T.A. by directing them to grant contracts 1B4021 and 1B4032 pursuant to 49 CFR 23 to the plaintiff together with any and all technical, bonding and financial assistance needed to ensure plaintiff's participation as an MBE.

5. And enjoin any other activity or conduct on the part of defendants deemed by the Court to be discriminatory and in violation of plaintiffs Civil and Constitutional Rights.

WALTER L.JONES

Sworn to before me this
19th day of August, 1981.

CHARLES L. DAVIS

Notary Public

APPENDIX R

SECOND AMENDED COMPLAINT, DRAFTED
BY ATTORNEY CHARLES L. DAVIS,
DATED AUGUST 14, 1981
AND FILED ON AUGUST 20, 1981

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

WALTER L. JONES and
WALTER L. JONES DEVELOPMENT CORPORATION, INC.
475 Statler Building
Buffalo, New York 14202

Plaintiffs

vs.

SECOND AMENDED COMPLAI

Civ - 80-1075E

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA)
181 Ellicott Street
Buffalo, New York 14205

and

JAMES H. WOLFORD - GEORGE L. WESSEL -
RICHARD C. SOUTHARD - JOHN F. DOWNING
WILLIAM G. GISEL - JOHN F. KOPCZYNSKI -
WILLIAM H. WENDEL, TED BECK - CHESTER R. HARDT,
GEORGE J. TRIMPER - ALFONSO V. BELLANCA,
JACK BAYER - WILLIAM E. STRAUB - JACOB F.
SCHOELLKOPF V - JAMES E. KELLY,
KENNETH G. KNIGHT - WILLIAM BULOW

URBAN MASS TRANSPORTATION ADMINISTRATION (UMTA)
400 7th Street S.W.
Washington, D. C.

and

BROCK ADAMS - JOSE CAMALLONGS
RICHARD S. PAGE - HAROLD B. WILLIAMS

NEAL CAVANOUGH and SIEGFRIED CONSTRUCTION CO., INC.
3980 Sheridan Drive
Buffalo, New York 14224

JOHN SANDERS and SLATTERY ASSOCIATES, INC.
46 54th Road
Maspeth, New York 11378

HERBERT F. DARLING and HERBERT F. DARLING, INC.
131 California Drive
Williamsville, New York 14221

IRVING FRANCIS and JOHN W. COWPER CO. INC.
4246 Ridge Lea Road
Amherst, New York 14240

S. H. BARTHOLOMEW and FRUIN COLNON/TOM TRAYLOR/
TRAYLOR BROS., WILLIAM STERLING and ONYX
CONSTRUCTION & EQUIPMENT CO.
1706 Olive Street
St. Louis, Missouri 33103

Defendants

JURISDICTION AND VENUE

1. In this individual action for declaratory relief, injunctive relief and damages to redress the deprivation of rights secured to the Plaintiffs by 49 C.F.R. Part 23 and as amended, Executive Order 11,246 as amended (30 F.R.12319), 42 U.S.C.A. §2000 (e) note, 42 U.S.C.A. § 1981, 42 U.S.C.A. §1983, 5 U.S.C.A. §553, §1 Civil Rights Act 1871, Title VI Civil Rights Act of 1964, 42 U.S.C. §2000d et. seq., 40 U.S.C. §471, 486 (a), 42 U.S.C. §6705 (f)2, 28 U.S.C. §1331, United States Constitutional Amendment §14, and ,5, 28 U.S.C. §1343 (3), U.M.T.A. Circular 1165.1, 49 U.S.C., 1604(1), Urban Mass Transportation Act of 1964, §19 (Public Law 95 - 599), 42 U.S.C.A. §1985.

2. This Court's Jurisdiction is invoked to secure implementation of 49 C.F.R. Part 23, et al, as stated above, which mandates affirmative action on all Federal Government funded construction contracts, pursuant to 42 U.S.C.A. §2000 (e) note, 2000 (d), et. seq., Executive Order, 11,246, et al. That plaintiffs invoke the Court's jurisdiction

pursuant to the 5th and 14th Amendments to the U.S. Constitution, 42 U.S.C.A. §1981, providing for equal protection and due process of Law, 42 U.S.C.A. §1983 providing for redress of civil rights denied an individual on the basis of race, color, national origin, etc., under the color of State Law, Regulations, custom or usage, 42 U.S.C. §1985, which provides relief from conspiracy to deprive persons of their civil rights. Jurisdiction of this Court is further invoked by all of the above cited statutes.

3. That the flagrant violations of the above laws are continuing to date, within the Western District of the state of New York and are effectively depriving the Plaintiff of his civil rights.

PARTIES

4. Plaintiff, WALTER L. JONES, is a black male citizen of the United States of America and a resident of Buffalo, New York. Plaintiff has been in the construction business for more than eleven (11) years, with sufficient experience to perform any general contracting work. Plaintiff is a prime contractor who is a self -taught construction

engineer, having supervised the building of a road bridge for the County of Erie, reconstructed and remodeled residential and commercial buildings and constructed new buildings. That Plaintiff - Corporation was certified by defendants, N.F.T.A. as a Minority Business Enterprise (M.B.E.) and is soley owned and operated by WALTER L. JONES. Plaintiff's employees are primarily black, non-union employees. That Plaintiff has successfully low bidded several construction contracts on the City of Buffalo's Local Light Rail Rapid Transit Construction Project, which is funded by the Urban Mass Transportation Administration (U.M.T.A.), a Division of the Federal Department of Transportation (D.O.T.) however, no contracts have been let to him or his company, solely because of his race and color. That Defendants have conspired, worked in unison, to deprive Plaintiffs of the rights afforded them by 49 C.F.R. Part 23, denying equal protection of the laws and depriving plaintiff, WALTER L. JONES, of the pursuit of Life, Liberty and Property.

5. Defendants, N.F.T.A. and its Policy Board and Executive Officers, (JOHN T. DOWNING, JAMES H. WOLFORD, GEORGE L. WESSEL, RICHARD C. SOUTH

WILLIAM G. GISEL, JOHN F. KOPCZYNSKI, WILLIAM H. WENDEL, CHESTER R. HARDT, GEORGE J. TRIMPER, ALFONSO V. BELLANCA, WILLIAM E. STRAUB, JACOB F. SCHOELLKOPF V, KENNETH G. KNIGHT, TED BECK, JACK BAYER, JAMES E. KELLY) are of a local public corporation co-ordinating transportation for Western New York, who are recipients of a D.O.T./U.M.T.A. Grant to build for Buffalo, a Light Rail Rapid Transit System. N.F.T.A., as the recipient of said grnat, contracted and agreed to take all reasonable steps to involve MBE's in all phases of contracting, to build said system. Defendants have failed to involve local valid M.B.E. prime contractors by re fusing to award to Plaintiff competively won prime contracts and refusing to implement 49 C.F.R. 23, as requested on several occasions, orally and in writ-ing. Specifically, officers and employees failed to implement agreed procedures to involve MBE's in all contracting phases as prime contractors. That N.F.T.A. can only go outside the local area for contractors when local MBE are not available; JONES has always been available.

Defendants, U.M.T.A. and its officers, BROCK ADAMS, JOSE CAMALONGA, RICHARD S. PAGE and

HAROLD B. WILLIAMS, a division of the D.O.T. created by the Urban Mass Transportation Act of 1964, have failed to implement, enforcement procedures pursuant to 49 C.F.R. we, for affirmative action in order to ensure no discrimination on the basis of race, color or national origin, etc., in performance of Federal Government assisted contracts. U.M.T.A. Officers ahve failed to find N.F.T.A. in non compliance even though N.F.T.A. have refused to utilize plaintiff or any other local valid M.B.E. prime contractor. And the officers have refused to withdraw funds or employ any other of its sanctions, to protect Constitutional Civil Rights of Plaintiff JONES.

Defendants, NEAL CAVANOUGH, SIEGFRIED CONSTRUCTION CO., JOHN SANDERS, SLATTERY ASSOCIATES, HERBERT F. DARLING, HERBERT F. DARLING CO., IRVING FRANCIS, JOHN W. COWPER CO., INC., S.H. BARTHOLOMEW, FRUIN COLNON/TOM TRAYLOR and TRAYLOR BROTHERS are all prime contractors who have been awarded prime contracts, and in conspiracy with the N.F.T.A. have denied prime contracts and sub-contracts to Plaintiffs. Have not taken any reasonable steps pursuant to 49 C.F.R. 23 to ensure plaintiff's participation

as prime or sub-contractor.

Defendant, WILLIAM STERLING and the ONYX CONSTRUCTION and EQUIPMENT CO., did conspire against Plaintiffs in concert with Defendants, FRUIN COLNON and TRAYLOR BROTHERS and N.F.T.A. and presented itself as a MBE and were awarded a contract as a M.B.E. joint venture prime partner, even though no experience or track record existed for them, in construction, they were later discovered and disclosed as being a M.B.E. "front". That Defendant WILLIAM STERLING, the President, had no experience or background as a contractor; other than as a common laborer.

6. That Defendants, N.F.T.A. and U.M.T.A. are government agencies that are charged with the legal responsibility to implement 49 C.F.R. 23 and all parties contracting with either Defendant, as recipient, contractor or sub-contractor on the Light Rail Rapid Transit Project are legally responsible for implementation of affirmative action plans, (42 U.S.C.A. §1981), and maintaining a policy of non-discrimination because of race or color under the color of State Law, (42 U.S.C.A. §1983)

ADMINISTRATIVE PROCEDURES

7. Within 180 days of the occurance of the acts in which Plaintiffs complained, they caused letters of complaint, pursuant to 49 C.F.R. 23.73 to be served on Mr. Brock Adams, Office of the Secretary - U.M.T.A. Said letters are dated February 22, 1979, March 5, 1979 and on May 17, 1979. On March 30, 1979 a complaint/letter was sent to HAROLD B. WILLIAMS and on July 19, 1979 a complaint letter was sent to GARY GAYTON, both of U.M.T.A. complaining about discrimination and violation of Plaintiff's Civil Rights by the N.F.T.A. and local prime contractors named as defendants.

8. That a cursory investigation was conducted, pursuant to 49 C.F.R. §23, and HAROLD B. WILLIAMS OF D.O.T., indicated that N.F.T.A. was not in violation of regulations or Plaintiffs' righ in a June 29, 1979, letter and on August 19, 1979, he indicated that 49 C.F.R. 23.73's assistance is optional for the N.F.T.A. to MBE's and Plaintiff JONES. That on February 22, 1979, Mr. JOSE CAMALL-ONGA determined that Plaintiffs does not meet the criteria of being lowes responsive and responsible bidder and a letter from RICHARD S. PAGE on April

11, 1979, totally disregarded the provisions of 49 C.F.R. §23, in holding the Plaintiffs had to acquire their own bonding and financing, without the N.F.T.A., and consequently all administrative assistance and remedies were exhausted in that Plaintiffs had a final determination from D.O.T./U.M.T.A. and apparently no administrative relief was or is possible on contract 1B0051 or for any contract; bid and won on later dates.

9. That consequently plaintiff commenced his action pro se to attempt to restrain defendants from further discrimination and to implement 49 C.F.R. 23. That several amendments to the Complaint was made and finally this amendment being the second- by and through legal counsel.

Statement of Claim

10. That defendant, N.F.T.A., has intentionally precluded the participation of valid local MBE prime contractors in the construction of the Buffalo Rapid Transit. Specifically, it has refused to award several contracts, each (1B4032), (1B4021), (1B0031), (1B0011) low bidded outright by plaintiffs. That plaintiffs have been denied all participation as a contractor or sub-contractor

allegedly for lack of bonding, financing and experience. That even though plaintiffs have sufficient experience and expertise to perform the above contracts none have been let to plaintiff because of his race and color. N.F.T.A. has granted Joint Venture Prime Contracts to a MBE front ONYX Corporation who had absolutely no experience and a very short corporate existance. "That plaintiff has had 11 years experience in construction, has built bridges, renovated houses and commercial buildings and built new commercial buildings, but was refused participation as a Prime Contractor, and refused as a Joint Venture partner or as a subcontractor." That defendant, N.F.T.A., refuses to follow the rules promulgated in 49 C.F.R. 23 which states a National Policy advocating affirmative action in cnstruction to help alleviate affects of past discrimination that barred MBE construction company's from entering the industry. That refusal to implement said regulations that have the force and effect of law pursuant to sections cited herein, violates Constitutional Civil Rights of Plaintiff. That said regulations that defendant refuses to implement are designed to help plaintiff overcome

barriers to participate in government assisted contracts.

That Defendant U.M.T.A. has refused to enforce 49 C.F.R. 23 and has failed to take affirmative action to ensure that no person is discriminated against on the grounds of race or color in programs funded by U.M.T.A.

Defendants Officers of U.M.T.A. and N.F.T.A. have refused to enforce said regulations pursuant to Statutory Law cited herein causing violation of plaintiff's Civil and Constitutional Rights.

Defendants Construction Company have conspired to violate plaintiffs rights by not awarding them sub-contracts but awarding said sub-contracts to Local and non Local MBE fronts and also failed to assist plaintiffs in bonding, financing or by way of Joint Venture Enterprise as dictated by 49 C.F.R. 23.

That failure to enjoin said conduct of the defendants will cause continuous and irreparable injury to the plaintiffs. The discriminatory practices of the defendants include, but are not limited to the following:

A. N.F.T.A. and its named agents defendants herein intentionally refused to let prime contracts to known local MBE's denying equal protection of the laws and violating rules promulgated by the Department of Transportation acting under the color of State Law and regulations of Federal Government.

B. N.F.T.A. officers refused to award Plaintiff prime contracts low bidded by said Plaintiff in violation of Constitutional and Civil Rights under color of State Law, Federal Regulations and Laws.

C. N.F.T.A. has intentionally refused to take all necessary and reasonable steps to ensure MBE participation as prime contractors to the maximum extent.

D. N.F.T.A. intentionally refused to assist plaintiff in financing, bonding, and technical expertise as dictated by 49 C.F.R. 23.

E. N.F.T.A. failed to enforce Affirmative Action Policy, codified by this Nation in Case and Statutory Laws, by utilizing Affirmative Action techniques to ensure participation of valid MBE's as prime contractors and all phases of contracting

and has specifically conspired to intentionally exclude plaintiff.

F. N.F.T.A. failed to set monitor and realize goals for each contract let and for the overall goals of the project regarding minority participation as prime and sub-contractors.

G. N.F.T.A. failed to describe MBE Programs as to prime and sub-contractors. Failed to describe how they will be implemented and/or enforced.

H. N.F.T.A. failed to properly certify MBE's and create a directory of known existing MBE's for utilization on the project.

I. N.F.T.A. is discriminating on the basis of race and color in denying plaintiff's prime contracts on the Light Rail Rapid Transit System under the pretext of lack of experience, finance and bonding.

J. U.M.T.A. refused to enforce 49 CFR 23 regarding it's prohibition against discrimination because of race or color, pursuant to §23.83 of 49 C.F.R. 23.

K. U.M.T.A. and its officers named herei as defendants refuse to use enforcement techniques to withdraw or withhold funds even though N.F.T.A. is not complying with the financing agreement.

L. Contractor defendants have failed to set and meet goals for minority participation in prime contracts through the utilization of legitimate existing known MBE's as sub-contractors.

M. Contractors defendants named herein have conspired under color of state law in collusion with each other and N.F.T.A. and U.M.T.A. and refused to grant plaintiff a sub-contract or Joint Venture depriving plaintiff of their Constitutional Rights.

N. That defendant Policy Board of N.F.T. has refused to implement policy and agreements consistent with 49 C.F.R. 23 and refuse to enforce the same in violation of plaintiffs Civil Constitutional Rights causing economical damages.

O. That defendant officers of U.M.T.A., BROOK ADAMS, RICHARD S. PAGE, JOSE CAMALLONGA and HAROLD B. WILLIAMS, have refused to enforce the terms of it's agreement with N.F.T.A. to plaintiff's detriment and violation of Constitutional Civil

Rights, Regulations and Federal Laws.

P. That defendant N.F.T.A. through it's counsel/agent have negotiated this claim with plaintiff and with plaintiff's counsel. Said agent has not negotiated in good faith towards resolution of this dispute, even though plaintiffs have attempted to amicably resolve said conflict. That defendnats have not made any good faith effort to comply with the requirements of 49 C.F.R. 23 since this Complaint was initialed admiistratively. Nor have any steps been taken to afford plaintiff any opportunity to participate as a Prime Contractor.

WHEREFORE, Plaintiff respectfully prays this Court for the following relief:

1. Enjoin continued violation of Civil Richts under Color of State Law by way of Injunctive Relief to prevent defendant, N.F.T.A., from awarding contract (1B40021) and enjoin defendant from proceeding with (1B4032) with anyone other than plaintiff's low bidder prior to a hearing thereon.

2. Order N.F.T.A. to honor it's Affirmative Action Commitment made to U.M.T.A. as a condition to receiving Grants for construction of the

Local Light Rail Rapid Transit System by affording plaintiffs who are economically disadvantaged, reasonable and necessary financial, bonding and technical assistance pursuant to 49 C.F.R. 23.

3. Monetary relief by way of punitive and compensatory damages resulting from discriminatory conduct of defendants.

4. Order U.M.T.A. and their officers to enforce 49 C.F.R. 23 regarding funding of Buffalo Rapid Transit System pending N.F.T.A. 's compliance with Constitutional Federal Regulations and Statutory Laws of this Nation regarding plaintiff participation as a MBE Prime Contractor.

5. Retain jurisdiction over this action to assure full compliance with the law and all Orders of this Court and require defendant to file such report as the Court deems necessary to evaluate such compliance.

6. Grant Plaintiff necessary cost and disbursements including a reasonable attorneys fee and such other and further relief as to the Court deems just and proper.

Dated: August 14, 1981

Charles L. Davis
1709 Statler Building
Buffalo, New York 14202
(716) 856-3812

APPENDIX S

ATTORNEY CHARLES L. DAVIS' PLEADING/COVER
EXECUTED BY PLAINTIFF JONES, AS
VERIFICATION TO HIS AFFIDAVIT
DATED AUGUST 19, 1981

engineer, having supervised the building of a road bridge for the County of Erie, reconstructed and remodeled residential and commercial buildings and constructed new buildings. That Plaintiff - Corporation was certified by defendants, N.F.T.A. as a Minority Business Enterprise (M.B.E.) and is soley owned and operated by WALTER L. JONES. Plaintiff's employees are primarily black, non-union employees. That Plaintiff has successfully low bidded several construction contracts on the City of Buffalo's Local Light Rail Rapid Transit Construction Project, which is funded by the Urban Mass Transportation Administration (U.M.T.A.), a Division of the Federal Department of Transportation (D.O.T.) however, no contracts have been let to him or his company, solely because of his race and color. That Defendants have conspired, worked in unison, to deprive Plaintiffs of the rights afforded them by 49 C.F.R. Part 23, denying equal protection of the laws and depriving plaintiff, WALTER L. JONES, of the pursuit of Life, Liberty and Property.

5. Defendants, N.F.T.A. and its Policy Board and Executive Officers, (JOHN T. DOWNING, JAMES H. WOLFORD, GEORGE L. WESSEL, RICHARD C. SOUTH

WILLIAM G. GISEL, JOHN F. KOPCZYNSKI, WILLIAM H. WENDEL, CHESTER R. HARDT, GEORGE J. TRIMPER, ALFONSO V. BELLANCA, WILLIAM E. STRAUB, JACOB F. SCHOELLKOPF V, KENNETH G. KNIGHT, TED BECK, JACK BAYER, JAMES E. KELLY) are of a local public corporation co-ordinating transportation for Western New York, who are recipients of a D.O.T./U.M.T.A. Grant to build for Buffalo, a Light Rail Rapid Transit System. N.F.T.A., as the recipient of said grnat, contracted and agreed to take all reasonable steps to involve MBE's in all phases of contracting, to build said system. Defendants have failed to involve local valid M.B.E. prime contractors by re fusing to award to Plaintiff competively won prime contracts and refusing to implement 49 C.F.R. 23, as requested on several occasions, orally and in writ-ing. Specifically, officers and employees failed to implement agreed procedures to involve MBE's in all contracting phases as prime contractors. That N.F.T.A. can only go outside the local area for contractors when local MBE are not available; JONES has always been available.

Defendants, U.M.T.A. and its officers, BROCK ADAMS, JOSE CAMALONGA, RICHARD S. PAGE and

HAROLD B. WILLIAMS, a division of the D.O.T. created by the Urban Mass Transportation Act of 1964, have failed to implement, enforcement procedures pursuant to 49 C.F.R. we, for affirmative action in order to ensure no discrimination on the basis of race, color or national origin, etc., in performance of Federal Government assisted contracts. U.M.T.A. Officers ahve failed to find N.F.T.A. in non compliance even though N.F.T.A. have refused to utilize plaintiff or any other local valid M.B.E. prime contractor. And the officers have refused to withdraw funds or employ any other of its sanctions, to protect Constitutional Civil Rights of Plaintiff JONES.

Defendants, NEAL CAVANOUGH, SIEGFRIED CONSTRUCTION CO., JOHN SANDERS, SLATTERY ASSOCIATES, HERBERT F. DARLING, HERBERT F. DARLING CO., IRVING FRANCIS, JOHN W. COWPER CO., INC., S.H. BARTHOLOMEW, FRUIN COLNON/TOM TRAYLOR and TRAYLOR BROTHERS are all prime contractors who have been awarded prime contracts, and in conspiracy with the N.F.T.A. have denied prime contracts and sub-contracts to Plaintiffs. Have not taken any reasonable steps pursuant to 49 C.F.R. 23 to ensure plaintiff's participation

as prime or sub-contractor.

Defendant, WILLIAM STERLING and the ONYX CONSTRUCTION and EQUIPMENT CO., did conspire against Plaintiffs in concert with Defendants, FRUIN COLNON and TRAYLOR BROTHERS and N.F.T.A. and presented itself as a MBE and were awarded a contract as a M.B.E. joint venture prime partner, even though no experience or track record existed for them, in construction, they were later discovered and disclosed as being a M.B.E. "front". That Defendant WILLIAM STERLING, the President, had no experience or background as a contractor; other than as a common laborer.

6. That Defendants, N.F.T.A. and U.M.T.A. are government agencies that are charged with the legal responsibility to implement 49 C.F.R. 23 and all parties contracting with either Defendant, as recipient, contractor or sub-contractor on the Light Rail Rapid Transit Project are legally responsible for implementation of affirmative action plans, (42 U.S.C.A. §1981), and maintaining a policy of non-discrimination because of race or color under the color of State Law, (42 U.S.C.A. §1983)

ADMINISTRATIVE PROCEDURES

7. Within 180 days of the occurance of the acts in which Plaintiffs complained, they caused letters of complaint, pursuant to 49 C.F.R. 23.73 to be served on Mr. Brock Adams, Office of the Secretary - U.M.T.A. Said letters are dated February 22, 1979, March 5, 1979 and on May 17, 1979. On March 30, 1979 a complaint/letter was sent to HAROLD B. WILLIAMS and on July 19, 1979 a complaint letter was sent to GARY GAYTON, both of U.M.T.A. complaining about discrimination and violation of Plaintiff's Civil Rights by the N.F.T.A. and local prime contractors named as defendants.

8. That a cursory investigation was conducted, pursuant to 49 C.F.R. §23, and HAROLD B. WILLIAMS OF D.O.T., indicated that N.F.T.A. was not in violation of regulations or Plaintiffs' righ in a June 29, 1979, letter and on August 19, 1979, he indicated that 49 C.F.R. 23.73's assistance is optional for the N.F.T.A. to MBE's and Plaintiff JONES. That on February 22, 1979, Mr. JOSE CAMALL-ONGA determined that Plaintiffs does not meet the criteria of being lowes responsive and responsible bidder and a letter from RICHARD S. PAGE on April

11, 1979, totally disregarded the provisions of 49 C.F.R. §23, in holding the Plaintiffs had to acquire their own bonding and financing, without the N.F.T.A., and consequently all administrative assistance and remedies were exhausted in that Plaintiffs had a final determination from D.O.T./U.M.T.A. and apparently no administrative relief was or is possible on contract 1B0051 or for any contract; bid and won on later dates.

9. That consequently plaintiff commenced his action pro se to attempt to restrain defendants from further discrimination and to implement 49 C.F.R. 23. That several amendments to the Complaint was made and finally this amendment being the second- by and through legal counsel.

Statement of Claim

10. That defendant, N.F.T.A., has intentionally precluded the participation of valid local MBE prime contractors in the construction of the Buffalo Rapid Transit. Specifically, it has refused to award several contracts, each (1B4032), (1B4021), (1B0031), (1B0011) low bidded outright by plaintiffs. That plaintiffs have been denied all participation as a contractor or sub-contractor

allegedly for lack of bonding, financing and experience. That even though plaintiffs have sufficient experience and expertise to perform the above contracts none have been let to plaintiff because of his race and color. N.F.T.A. has granted Joint Venture Prime Contracts to a MBE front ONYX Corporation who had absolutely no experience and a very short corporate existance. "That plaintiff has had 11 years experience in construction, has built bridges, renovated houses and commercial buildings and built new commercial buildings, but was refused participation as a Prime Contractor, and refused as a Joint Venture partner or as a subcontractor." That defendant, N.F.T.A., refuses to follow the rules promulgated in 49 C.F.R. 23 which states a National Policy advocating affirmative action in cnstruction to help alleviate affects of past discrimination that barred MBE construction company's from entering the industry. That refusal to implement said regulations that have the force and effect of law pursuant to sections cited herein, violates Constitutional Civil Rights of Plaintiff. That said regulations that defendant refuses to implement are designed to help plaintiff overcome

barriers to participate in government assisted contracts.

That Defendant U.M.T.A. has refused to enforce 49 C.F.R. 23 and has failed to take affirmative action to ensure that no person is discriminated against on the grounds of race or color in programs funded by U.M.T.A.

Defendants Officers of U.M.T.A. and N.F.T.A. have refused to enforce said regulations pursuant to Statutory Law cited herein causing violation of plaintiff's Civil and Constitutional Rights.

Defendants Construction Company have conspired to violate plaintiffs rights by not awarding them sub-contracts but awarding said sub-contracts to Local and non Local MBE fronts and also failed to assist plaintiffs in bonding, financing or by way of Joint Venture Enterprise as dictated by 49 C.F.R. 23.

That failure to enjoin said conduct of the defendants will cause continuous and irreparable injury to the plaintiffs. The discriminatory practices of the defendants include, but are not limited to the following:

A. N.F.T.A. and its named agents defendants herein intentionally refused to let prime contracts to known local MBE's denying equal protection of the laws and violating rules promulgated by the Department of Transportation acting under the color of State Law and regulations of Federal Government.

B. N.F.T.A. officers refused to award Plaintiff prime contracts low bidded by said Plaintiff in violation of Constitutional and Civil Rights under color of State Law, Federal Regulations and Laws.

C. N.F.T.A. has intentionally refused to take all necessary and reasonable steps to ensure MBE participation as prime contractors to the maximu extent.

D. N.F.T.A. intentionally refused to assi plaintiff in financing, bonding, and technical expertise as dictated by 49 C.F.R. 23.

E. N.F.T.A. failed to enforce Affirmative Action Policy, codified by this Nation in Case and Statutory Laws, by utilizing Affirmative Action techniques to ensure participation of valid MBE's as prime contractors and all phases of contracting

and has specifically conspired to intentionally exclude plaintiff.

F. N.F.T.A. failed to set monitor and realize goals for each contract let and for the overall goals of the project regarding minority participation as prime and sub-contractors.

G. N.F.T.A. failed to describe MBE Programs as to prime and sub-contractors. Failed to describe how they will be implemented and/or enforced.

H. N.F.T.A. failed to properly certify MBE's and create a directory of known existing MBE's for utilization on the project.

I. N.F.T.A. is discriminating on the basis of race and color in denying plaintiff's prime contracts on the Light Rail Rapid Transit System under the pretext of lack of experience, finance and bonding.

J. U.M.T.A. refused to enforce 49 CFR 23 regarding it's prohibition against discrimination because of race or color, pursuant to §23.83 of 49 C.F.R. 23.

K. U.M.T.A. and its officers named herein as defendants refuse to use enforcement techniques to withdraw or withhold funds even though N.F.T.A. is not complying with the financing agreement.

L. Contractor defendants have failed to set and meet goals for minority participation in prime contracts through the utilization of legitimate existing known MBE's as sub-contractors.

M. Contractors defendants named herein have conspired under color of state law in collusion with each other and N.F.T.A. and U.M.T.A. and refused to grant plaintiff a sub-contract or Joint Venture depriving plaintiff of their Constitutional Rights.

N. That defendant Policy Board of N.F.T.A. has refused to implement policy and agreements consistent with 49 C.F.R. 23 and refuse to enforce the same in violation of plaintiffs Civil Constitutional Rights causing economical damages.

O. That defendant officers of U.M.T.A., BROOK ADAMS, RICHARD S. PAGE, JOSE CAMALLONGA and HAROLD B. WILLIAMS, have refused to enforce the terms of it's agreement with N.F.T.A. to plaintiff's detriment and violation of Constitutional Civil

Rights, Regulations and Federal Laws.

P. That defendant N.F.T.A. through it's counsel/agent have negotiated this claim with plaintiff and with plaintiff's counsel. Said agent has not negotiated in good faith towards resolution of this dispute, even though plaintiffs have attempted to amicably resolve said conflict. That defendnats have not made any good faith effort to comply with the requirements of 49 C.F.R. 23 since this Complaint was initialed admiistratively. Nor have any steps been taken to afford plaintiff any opportunity to participate as a Prime Contractor.

WHEREFORE, Plaintiff respectfully prays this Court for the following relief:

1. Enjoin continued violation of Civil Richts under Color of State Law by way of Injunctive Relief to prevent defendant, N.F.T.A., from awarding contract (1B40021) and enjoin defendant from proceeding with (1B4032) with anyone other than plaintiff's low bidder prior to a hearing thereon.

2. Order N.F.T.A. to honor it's Affirmative Action Commitment made to U.M.T.A. as a condition to receiving Grants for construction of the

are dropped without leave to further amend and with prejudice as to the above-named parties defendants.

John T. Elfvin

John T. Elfvin
United States District Jud

Dated: Buffalo, New York
November 2, 1981

APPENDIX W

ATTORNEY CHARLES L. DAVIS' LETTER
TO PLAINTIFF JONES,
DATED SEPTEMBER 23, 1988

Law Offices of
Charles L. Davis, Esq.

(716) 856-3812

1709 Statler Buildi
Buffalo, New York 142

September 23, 1982

Mr. Walter Jones
86 Cornell Street
Amherst, New York 14226

Re: Jones vs. NFTA Civil No. 10075E

Dear Mr. Jones:

Please find enclosed a Notice of Motion Calendar Call recently received from Mr. John K. Adams of the U. S. District Court for the Western District of New York.

Please make arrangements to allow me to sign the Agreement for me to withdraw from your case. If I have not heard from you by the 6th of October, I will bring a Motion to be removed from your case.

I am thanking you in advance for your anticipated cooperation.

Yours truly,

Charles L. Davis

Charles L. Davis
Attorney at Law

CLD/sp

Enclosure
Notice of Motion

APPENDIX X

PLAINTIFF JONES' RESPONDING LETTER
TO ATTORNEY CHARLES L. DAVIS
DATED OCTOBER 14, 1981

An Equal Opportunity Employer

WALTER L. JONES DEVELOPMENT CORPORATION
GENERAL CONTRACTORS
A Minority Owned Corporation
CONSULTANTS

86 Cornell Avenue
Amherst, N.Y. 14226
TELEPHONE 854 8526

October 14, 1982

Mr. Charles L. Davis, Esq.
Attorney & Counselor at Law
1709 Statler Building
Buffalo, New York 14202

Re: Walter L. Jones, et al vs. Niagara Frontier Transportation Authority, et al.
Civ No. 80-1075E

Dear Mr. Davis:

This letter is in respondence to your letter dated September 22, 1982 whereas you requested to withdraw as attorney in the above captioned case rather than honor my demands and reinstate the Union defendants to the action, after your deliberately dropping the Union defendants from your amended complaints, over my objections and deleting the causes of actions, with respect to the conspiracy as alleged in my amended and supplemental complaint, dated March 30, 1981 and filed on April 3, 1981, before you were hired in this case.

Mr. Davis, I firmly believe that you dropped the Union defendants upon the request of your friend, Ronald Fino of local union No. 210, due to your fear of the unions and due to my seeing him on your floor in June of 1981, before you amended the complaint and further due to your verbally stating that I should cease trying to sue the unions before they hire someone to rub me out.

I further feel that you are now deciding to withdraw, due to your knowing that I have run out of funds and might not be able to hire another attorney to prosecute this action; none the less, I am herein forwarding to you, a prepared and signed Stipulation of Attorney Withdrawal, for your signature, as per your request.

Very truly yours,

Walter L. Jones
WALTER L. JONES, President
WALTER L. JONES DEVELOPMENT CORP., INC.

WLJ:mm
cc: file

APPENDIX Y

PLAINTIFF JONES' MOTION TO AMEND
COMPLAINT, DATED OCTOBER 20, 1981
AND FILED ON OCTOBER 21, 1981

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES,
via Assignment of Claim and Cause of Action from
WALTER L. JONES DEVELOPMENT CORPORATION, INC.,
Plaintiff

-against-

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL.

Defendants

MOTION FOR LEAVE TO AMEND COMPLAINT SERVE NEW INTERROGATORIES, AND MAKE PERSONAL SERVICE ON ALL DEFENDANTS
CIVIL 80-1075E

S I R S:

PLEASE TAKE NOTICE that upon the annexed Affidavit of Walter L. Jones, via Assignment of Claim and Cause of Action from Walter L. Jones Development Corporation, Inc., as Attorney Pro se, herewith Proposed Sixth Amended Complaint and New Interrogatories; and upon all the pleadings and proceedings heretofore had; and upon the executed Stipulation of Attorney Charles L. Davis withdrawing as Attorney of Record; (copies of Assignment and Stipulation are attached hereto as Exhibits 1 and 2).

Plaintiff, at 9 o'clock in the forenoon on November 1, 1982; makes application to this Court for leave to amend the Complain and to serve new interrogatories directed to each Defendant separately, pursuant to Rules 15, 23, and 33 of the Federal Rules for Civil Procedure.

PLEASE TAKE FURTHER NOTICE that Plaintiff requests thirty, (30), days to finalize and serve the Amended Complaint and New Interrogatories, due to the number of Defendants that will be included in the herein action.

PLEASE TAKE FURTHER NOTICE that Plaintiff makes application to this Court for permission to make personal service, by an individual over the age of 18 years, of the Amended Complaint and New Interrogatories on all Defendants, in lieu of the U. S. Marshall; and for such other and further relief as this Court deems just and proper.

DATED: Amherst, New York
October 20, 1982

Walter L. Jones
WALTER L. JONES, Attorney
Pro se
via Assignment of Claim and
Cause of Action from
WALTER L. JONES DEVELOPMENT
CORP., INC.

OFFICE AND POST OFFICE ADDRESS
86 Cornell Street
Amherst, New York 14226

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES
via Assignment of Claim and
Cause of Action from WALTER L.
JONES DEVELOPMENT CORPORATION, INC.

Plaintiff

against

NIAGARA FRONTIER
TRANSPORTATION AUTHORITY,
ET AL.

Defendants

A F F I D A V I T

IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO AMEND

CIV : 80-1075E

STATE OF NEW YORK)
ss:
COUNTY OF ERIE)

WALTER L. JONES, being duly sworn, deposes and says:

1. I am the Plaintiff in this action and Attorney Pro se, under 28 USC Section 1654, via Assignment of the herein Claim and Cause of Action from Walter L. Jones Development Corporation, INc., dated September 9, 1982; and pursuant to Charles L. Davis, Esq., Stipulation allowing him to withdraw as Attorney of Record, dated October 14, 1982. Copies of which are attached hereto as Exhibits 1 and 2.

2. Plaintiff makes this Affidavit, pursuant to direction of the Court, dated September 17, 1982; and Order, dated January 27, 1982; and the Plaintiff requests leave to amend his complaint to a "Class Action Race Discrimination and Deprivation Civil Law Suit."

3. Plaintiff, WALTER L. JONES, request leave to amend his complaint to include all material-party-Defendants and additional facts obtained in the preliminary discovery; and to serve new interrogatories directed to each Defendant separately; and with leave to further amend his complaint pursuant to discovery findings and/or new facts. Copies of the Proposed Amended Complaint (without exhibits) and the Proposed New Interrogatories are enclosed herewith as Exhibits 3, 4, 5, 6, 7, 8, and 9.

4. Defendants' answers to the previous combined congested interrogatories, served on Defendants by my former Attorney, Charles L. Davis, were not sufficiently answered, and in many instances, totally circumvented, ommitted, or erroneous, due to the congested overall general nature

of the interrogatories that were not specific as are the proposed new interrogatories.

5. Plaintiff has found, through the preliminary discovery, that all material-party-Defendants were not included in the previous complaints and therefore requests leave to amend and include said new Defendants and new facts into his sixth amended complaint; together with permission to serve new interrogatories directed to Defendants separately.

6. Plaintiff further respectfully requests that he be allowed to make personal service by a person over the age of 18 years, on all local defendants, in lieu of the US Federal Marshall's office.

7. Plaintiff further requests a thirty (30) day extension of time to finalize and serve all Defendants the Amended Complaint and New Interrogatories, due to the additional number of Defendants, and Plaintiff's need for additional time to finalize the arrangmenets with the Attorney and/or Attorneys who will be representing the additional parties (Plaintiffs) in this Class Action

8. Plaintiff attaches herewith copies of additional proposed parties Defendants: local COALITION, ASSOCIATIONS, and UNIONS and their Officials' executed agreements with UMTA; and copies of five separate union subcontract agreement clauses barring non-union subcontractors participation; together with a letter from a Union CONTRACTOR substantiating Plaintiff allegations - attached to Plaintiff's Memorandum as Exhibits 13, 14, 15, 16, 17, 18, and 19 thereof.

WHEREFORE, Plaintiff prays for an Order granting him leave to amend his complaint to include all material-party-Defendants; and for an Order designating this action a "Class" Action; and for permission to make personal service of the Amended Complaint and New Interrogatories on all Defendants; and for an extension of thirty, (30), days to finalize and serve said Amended Complaint and New Interrogatories; together with additional leave to amend, however, after discovery if additio-

nal facts require; and for such other and further reliefs as this Court deems just and proper.

Walter L. Jones
WALTER L.JONES, Attorney
Pro se

Sworn to before me this

30th day of October, 1981

Joann Jones

JO ANN JONES
COMMISSIONER OF DEEDS
In and for the City of Buffalo, NY
My Commission Expires Dec. 31, 1982

APPENDIX Z

COURT OF APPEAL ORDER, DISMISSING APPEAL, AND DENYING MANDAMUS DATED JANUARY 23, 1986

MANDATE

WALTER L. JONES, ET AL
Plaintiffs-Appellants
-vs-
NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL,
Defendants-Appellees.

85-7836

NOTICE OF MOTION

FOR: Order Dismissing Appeal

MOTION BY:

LIPSITZ, GREEN FAHRINGER ROLL & JAMES, RICHARD WEISBECK. JR.
One Niagara Square
Buffalo, New York 14202
(716) 849-1333

OPPOSING COUNSEL:

WALTER L. JONES, PRO SE
204 Kings Higway, Snyder NY 14
(716) 839-2696 and
JOHN L. HARGRAVE, ESQ.
482 Franklin Street Buffalo NY
(716) 884-2606

United States Court of Appeals

Jan 10 1986
ELAINE B. GOLDSMITH CLERK
SECOND CIRCUIT

Judge or agency whose order is being appealed:

Honorable John T. Elfvin, U.S.D.C., W.D.N.Y.

Brief statement of the relief requested:

Motion to dismiss appeal filed in the District Court on October 22, 1985 because the order appealed from is non-final and the Court of Appeals lacks jurisdiction to entertain it.

Signature of attorney
Richard P. Weisbeck Jr.
1/21

appearing for: see attached client list
12/18/85

Appellant/Petitioner ☐ Plaintiff ☒ Defendant

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is granted XXXXX

A TRUE COPY
Elaine B. Goldsmith
Clerk

Unitd States Court of Appeals
Filed
Jan 23 1986
ELAINE B. GOLDSMITH CLERK
SECOND CIRCUIT

J. EDWARD LUMBARD U.S.C.J.
THOMAS J. MESKILL U.S.C.J.
LAWRENCE W. PIERCE U.S.C.J.

PRO SE

1/21

WDNY
80CV1075
ELFVIN

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

MANDATE

At a Stated Term of the United States Court of Appeals, for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 23rd day of January, One thousand nine hundred and eighty-six.

In Re: Walter L. Jones,
Petitioner,

A motion having made herein by Petitioner pro se for Writ of Mandamus

Upon consideration therof, it is
Ordered that said motion be and it hereby is DENIED.

J. Edward Lumbard, U.S.C.J.

Thomas J. Meskill, U.S.C.J.

TJM JEL LWP

Lawrence W. Pierce, U.S.C.J.
Circuit Judges

A TRUE COPY
ELAIN B. GOLDSMITH
Clerk

APPENDIX AA

ORDER ENTERED BY MAGISTRATE
MAXWELL, DIRECTING DISCOVERY
DATED OCTOBER 2, 1986

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES, and WALTER L. JONES DEVELOPMENT CORPORATION, INC.,
Plaintiffs,

vs.

CIVIL 80-1075E

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA), et al,

Defendants.

SIR/MADAM: Take notice of an ORDER, XXXXXX of which the within is a copy, duly granted in the above entitled action on the 1st of October, and entered in the office of the Clerk of the United States District Court, Western District of New York, on the 2nd day of October.

Dated: Buffalo, New York
October 3, 1986

EDWARD P. GUETH, JR.
CLERK
United States District Court
Western District of New York
U.S. Courthouse
Buffalo, New York 14202

cc: Walter L. Jones
James A. W. McLeod, Esq.
Michael Beilwech, Jr., Esq.
Richard Lipsitz, Esq.
E. Joseph Giroux, Esq.
Joseph Randazzo, Esq.
Victor Silverstein, Esq.
Jerome C. Gorski, Esq.
William McDermott, Esq.
John J. Cooney, Esq,
James Gresens, Esq.
Dominic Teranova, Esq.
U.S. Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES, and WALTER L. JONES DEVELOPMENT CORPORATION, INC.,
Plaintiffs,

vs. CIVIL 80-1075E
ORDER

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA), et al.,
Defendants

By order of the Hon. John T. Elfvin the above matter has been referred to the undersigned for pretrial procedures. within forty-five (45) days of the date of this order, all parties who intend to conduct any discovery or pretrial procedures shall notify the court and counsel for all parties as to the discovery which they intend to conduct and the time within which it is expected that such discovery can be reasonably completed. In the event such a report is not filed by a party, it will be assumed that such party does not contemplate any pretrial procedures and is prepared to proceed with trial.

Upon the filing of such reports, a scheduling order may be entered as provided in Fed. R. Civ.P. Rule 16(b).

So ordered.

Edmund F. Maxwell
United States Magistrate

DATED: Buffalo, New York
October 1, 1986

APPENDIX BB

CIVIL DOCKET CONTINUATION SHEETS
DOCKET NO. 80-1075E

1982

Nov 9	167	Filed	Pltf's Amended Notice of Motion to supplemental pleadings, ret 11/15/82
15		-	New date for motions and breifing schedule to be set by court
Dec 7	168	Filed	Memorandum and Order that the stipulation of w/drawal of Charles Davis is hereby order approved nunc pro tunc as of the day it was filed, 10/21/82. Walter L. Jones' motion for leave to further amend his complaint is denied in all respects. In view of the non-observance of the requirement that corporate litigant be represented by counsel, the clerk shall enter judgement dismissing this action unless within 45 days of entry of this order, Pltf presents an affidavit of counsel to the effect that such counsel has undertaken to and will represent Pltf herein. The effect of this order shall be stayed upon the filing of a notice of appeal and payment of the fee therefore, pending the disposition of such appeal.-Elfvin, DJ. Notice and cys to all parties (8) F-255

PAGES 11 - 18 (FROM DEC 7, 1982 - SEPT 10, 1985) (NR 169-346) HAVE BEEN OMMITTED

1986

Oct 2	347	Filed	Order all parties within 45 days of date of this order who intend to conduct any discovery or pretrial procedures shall notify the court and counsel for all parties as to discovery which they intend to conduct, etc. upon filing of such reports a scheduling order may be entered .-Maxwell Notice-cys to all parties (dktd 10-3-86) F-301
10		-	Third Supplemental record returned from Clerk, CCA
21	348	Filed	OTSC directing Defts show cause why an order should not be entered, granting a stay of discov-

1986		
Oct21	348	(Cont) ery, etc pending determination of Pltf, P se petition for certiorari docketed in the U.S Supreme Court. 8-5-86, ret. 11-17-86, 1:00 p.m. Maxwell (Dktd 10-21-86) FJ
28	349	Filed Pltfs' affidavit of service of OTSC 10-26-86
Nov10	350	Filed Pltf's amended motion and affidavit to ame complaint, substitute and add parties, r 11-17-86 efm
Dec 3	351	Filed Defts' notice of cross motion for imposit of sanctions with supporting affidavit, r 12-18-86 efm
9	352	Filed Supplemental affidavif of James A. W. McLeo Esq.
9	353	Filed Pltf's notice of joined motion, motion for reco sideration and revision of non-final orders wi affidavit (Jones), ret 12-18-86 before Magistra Maxwell Vol I
9	354	Filed Supplemental volume (exhibits) in support motion for reconsideration Vol II
9	355	Filed Pltf Jones certificate of service of 12-9-86
11	356	Filed Defts notice of motion, motion & affidavit oppo ing Pltf's motion to amend and cross moti for imposition of sanctions, atty fees, r 12-18-86 efm
11	357	Filed Answering affidavit of John J. Cooney, Esq.
12	358	Filed Deft NFTA's notice of cross motion for imposit of sanctions ret 12-18-86 efm
1987		
Jan 8	358	Filed Pltf's notice of supplemental and cross moti for declaratory relief, permanent injunctio and imposition & sanction with affidavit(s) atty McLeod; & Pltf. ret 1-16-87 efm

1987

Jan 8	360	Filed Pltf's certificate of service of notice, etc served 1-2-87
9	361	Filed Defts Carpenters District Council of Buffalo, et al's notice of motion, cross motion for sanctions and atty's fees with affidavit, ret 1-16-87 efm
12	362	Filed Defts (Unions) notice of cross motion and affidavit for an order imposing sanctions pur rule 11, etc. ret 1-16-87 efm
13	363	Filed affidavit of Richard A. Clack, Esq. in opposition to Pltf's mtn to amend & supplement complaint
15	364	Filed Reply affidavit of Walter L. Jones, Pro se
15	365	Filed Reply affidavit of James A. W. McLeod, Esq.
15	366	Filed affidavit of John E. Runals, Esq. advising of the death of Robert Chester & opposing Pltf's motion to amend complaint
22	367	Filed Deft Mechanical contractors Assoc of Buffalo & Vicinity's notice of deposition of Pltf Walter L. Jones 3-2-87
16		- Argument before Magistrate Maxwell on Pltf's motion to amend complaint and Defts' motions for sanctions. Court to file order
20	368	Filed Pltf's Notice of Appeal to the U.S. District Court
23	369	Filed Pltf Attorney's Notice of Appeal to the U.S. District Court
28	370	Filed Pltfs amended notice of motion for declaratory relief, etc. ret 2/9/87
28	371	Filed Transcript of proceedings before Magistrate Maxwell, 1-16-87

1987

Jan28	372	FIled	Order denying motion of Walter L. Jones to amend complaint to permit him to re-enter proceedings as an individual Pltf, granting with prejudice, the application of Pltf Corporation to withdraw its motion to amend; denying all motions by Defts for sanctions, upon application of Pltf's counsel , the motion for declaratory and other relief filed 1-8-87 is withdrawn; pur to Rule 16 FRCP, the following Pretrial Order is entered: 1) no further motions to amend shall be filed; 2) neither Pltf nor any Deft shall be required to further respond to any interrogatories previously filed; 3) no further interrogatories shall be filed w/o leave of the court, et 40 in the event any party desires depositions of other party or witnes, or desires production of documents, notices shall be filed by 2-27-87; 5) all discovery shall be completed by 6-30-87, etc; 6) a further pretrial conference shall be held at Room 41- 7-14-87 at 2:00 p.m. to discuss possibility of settlement, etc. -Maxwell Notice-cy to all parties (dktd 1-29-87) F-30-
29	373	Filed	James A. A. McLeod Esq.'s supporting affidavit for Pltf's motion for declaratory and injunctive relief, etc.
30	374	Filed	Pltf's affidavit of service of amended motion served 1-26-87
Feb 2	375	Filed	certain Defts Fruin-Colnon, et al's notice to take deposition of Walter L. Jones Development Corp 3-2-87
2	376	Filed	Supplemental affidaviat of Walter L. Jones
2	377	Filed	Walter L. Jones Pro se Amended Notice of Appeal to U.S.D.C.
2	378	Filed	Pltf Walter L. Jones Dev. Cor.'s amended Notice of Appeal to U.S.D.C.

1987

Feb 4	379	Filed	Deft Construction Industry Coalition's notice to take deposition of Walter L. Jones Dev. Corp. 3-2-87
4	380	Filed	Order Walter L. Jones has been denied permission to re-enter this proceeding as an individual (Magistrate's Order 1-18-87) following dismissal of his cause of action (Order of this court: 10-16-85; inasmuch as he is no longer a party, Mr. Jones 'amended notice of motion' is without effect and will not be addressed by this Court.- Elfvin, DJ. Notice-cys to all parties (Dktd 2-4-87) F-305
6	381	Filed	Affidavit of Douglas S. Cream Esq. in response to notice of appeal and in support of cross motion for sanctions
9	382	Filed	NFTA's notice to take deposition of Walter L. Jones Dev. Corp. & request for documents production, 3-2-87
9	383	Filed	Defts Wessel and Buffalo AFL CIO Council's notice to take deposition of Pltf & documents production 3-2-87
10	384	Filed	certain Defts (Fruin-Colnon, et al) notice of cross motion, motion and affidavits for order imposing sanctions, ret 3-2-87 jte
11	385	Filed	Affidavit of James A. W. McLeod, Esq
12	386	Filed	Deft U.A. Plumbers Local 36 & Truck Drivers Local 449's notice to take deposition & request for documents of Pltf. Walter L. Jones Dev. Corp., 3-2-87
18	387	Filed	Defts John W. Cowper & Irving Francis' notice to take deposition of Pltf 3-2-87
19	388	Filed	Defts' Carpenters District Council, Truck Drivers Local 449, Lathers Local 32 and Plumbers Local 36 notice of cross motion and affidavit for Rule 11 Sanctions, ret 3-2-87

CIVIL DOCKET CONTINUATION SHEETS (CONT.)

1987

Feb19	389	Filed	Defts Construction Industry Employers Association and John Fuhrmann's notice of cross motion and affidavit for sanctions ret 3-2-87
19	390	Filed	Walter L. Jones, Pro se notice of withdrawal of appeal
19	391	Filed	Pltf Walter L. Jones Dev Corporation notice of withdrawal of appeal
19	392	Filed	Pltfs' Notice of Appeal (Copies mailed to Messrs. McLeod, Beilwech, Lipsitz, Giroux, Randazzo, Silverstein, Gorski, McDermott, Cooney, Gresens, Terranova, Jenny, King, Cream, Bartolomei, and Mistreet, Damon & Morey, Runals, Broderick & Shoemaker, and to Clerk, CCA with copy of docket entries, CCA's Forms C and D given to Mr. Jones)
19	393	Filed	Pltf's notice of cross motion staying all proceedings pur to Rule 62(C) with affidavit ret. 3-2-87
20	394	Filed	Certain union Defts motion for Rule 11 sanctions with supporting affidavit, ret. 3-2-87
20	395	Filed	NFTA notice of cross motion & cross motion for sanctions with affidavit, ret 3-2-87
25	396	Filed	Pltfs' Form D - transcript not ordered
Mar 2	397	Filed	OTSC directing Pltf Walter L. Jones Dev. Corp. show cause why an order should not be entered compelling him to appear and give deposition 3-3-87; awarding moving Defts expenses, etc., and awarding moving Defts sanctions pur 28 USC §1927, ret 3-2-87 before Magistrate Maxwell. -Maxwell (dktd 3-2-87) F-30
3	398	Filed	Atty Perlman's affidavit of service of OTSC 3-2-87
10	399	Filed	Order extending time for Walter L. Jones Dev. Corp to serve deposition notices to 4-1-87

Mar10	399	(Cont)	directing its president Walter L. Jones to appear for deposition testimony 3-16-19, 1987; directing Pltf Walter L. Jones Dev Corp produce documents in response to Defts' deposition notices no later than 3-11-87, 5:00p.m.; reserving decision until such time, if ever, that attorneys for one or more Defts' motion for a hearing on such costs; further denying Defts' motions for expenses against James A. W. McLeod, Esq. - Maxwell Notice-cys to all parties (dktd 3-10-87) F-306
10	400	Filed	cert. copy of Order of U.S. Court of Appeals dismissing appeal for failure to comply with Appeals Management Plan
11	401	Filed	Plaintiff's Notice of Appeal (cys mailed to Messrs. McLeod, Beilwech, Lipsitz, Giroux, Randazzo, Silverstein, Gorski, McDermott, Cooney, Clack, Terranova, Jenny, King, Cream, Bartolomei, Mistrett, Damon & Morey, Runals, Broderick & Shoemaker, and to Clerk, CCA w/cy of dkt. entries; CCA's Forms C and D given to Mr. Jones)
16	402	Filed	Pltf Walter L. Jones' Amended Notice of APpeal (copies mailed to Messrs. McLeod, Beilwech, Lipsitz, Giroux, Randazzo, Silverstein, Gorski, McDermott, Cooney, Clack, Terranova, Jenny, King, Cream, Bartolomei, Mistrett, Damon & Morey, Runals, Broderick & Shoemaker, and the Clerk, CCA with copy of last 2 pgs. of docket entries)
16	403	Filed	Form D - transcript of 3-2-87 proceedings ordered
16	404	Filed	Cert. copy of Order of U.S. Court of Appeals vacating order dismissing appeal for failure to file Forms C & D, and reinstating appeal
16	405	Filed	Transcript of proceeding taken at Hodgson, Russ etc. 3-2-87
16	406	Filed	Transcript of proceeding taken before Magistrate Maxwell 3-2-87

CIVIL DOCKET CONTINUATION SHEETS (CONT.)

1987

18		Rec'd Rec'd U.S. Court of Appeals scheduling order - Record due 4-6-87 (Mag's order)
19	407	Filed certain Defts, (Siegfried, etc) notice of motion, motion and affidavit for dismissal of action, ret 3-30-87
19	408	Filed EBT of Walter L. Jones taken 3-16-87
20	409	Filed Affidavit of Jerry A. Gambino, Esq in support of dismissal
23		Rec'd U.S. Ct. of Appeals scheduling order - Record due 4-6-87
24	410	Filed Deft. UMTA's notice of motion, motion and affidavit for dismissal of complaint, ret 4-13-87
30	411	Filed certain Defts (Fruin-Colnon, et al) affidavit of service by mail of memorandum of law on all parties 3-30-87
31	412	Filed Pltf Walter L. Jones Pro se, Notice of Appeal to the U.S. Supreme Court
31	413	Filed Pltf Walter L. Jones, Pro se certificate of service of Notice of Appeal to the U.S. Supreme Court
31	414	Filed Walter L. Jones' Pro se, notice, and motion, affidavit for stay of all proceedings (no ret)
Apr 1	415	Filed Pltf Walter L. Jones Dev. Corp's notice and motion for reconsideration, ret 4-10-87 efm
3	416	Filed Pltfs' notice and cross motion in opposition to Defts' motion for dismissal with affidavit(s) ret 4-13-87
6	417	Filed affidavit of Paul I. Perlman opposing Pltf's motion for a stay
7	418	Filed Pltf's Pro se certificate of service of memorandum of law served 4-7-87

CIVIL DOCKET CONTINUATION SHEETS (CONT.)

1987

Apr 7	419	Filed affidavit of AUSA Joseph B. Mistrett in oppostion to Pro se motion for stay of all proceedings
7	420	Filed reply affidavit of Paul I. Perlman, Esq. in support of dismissal motion
7	421	Filed affidavit of service of Atty Perlman's affidavit 4-7-87
8	422	Filed affidait of Paul I. Perlman, Esq in response to notice and motion for reconsideration
8	423	Filed affidavit of service of Atty Perlman's response affidavit served 4-7-87
9	424	Filed Defts Plumbers LU 36 affidait in opposition to stay proceedings and in support of motion to dismiss
9	425	Filed reply affidavit of Walter L. Jones to Mr. Perlman's affidavit
9	426	Filed reply affidavit of Walter L. Jones
13	427	Filed supplmental reply affidvit of Walter L. Jones
13		Court hears oral arguments of counsel and matters of Defts' motions to dismiss and Pltf's motion to stay all proceedings are submitted
16	428	Filed Memorandum and order granting Defts' motion to dismiss this action pur to Fed.R.Civ.P. rule 37. -Elfvin,DJ. Notice -cys to all parties (dktd 4-17-87) F-307
17	429	Filed Judgement on decision by the court, -Clerk Notice-cys same as above (dktd 4-17-87) F-307
17		JS 6 Made
17	430	Pltf Walter L. Jones' amended notice of appeal to the Supreme Court of the U.S.

CIVIL DOCKET CONTINUATION SHEETS (CONT.)

1987

Apr20	431	Filed Pltf. Walter L. Jones' corrected amended notice of appeal to the Supreme Court of the U.S.
20	432	Filed Pltf. Walter L. Jones' notice of appeal to the Supreme Court of the U.S. of Order & Jedgement of 4-16&17-87
20	433	Filed Pltf Walter L. Jones certificate of service of notice of appeal
20	434	Filed Pltf Walter L. Jones Dev. Corp. Inc. notice of appeal to the Supreme Court of the U.S. of Order & Judgement of 4-16&17-87
20	435	Filed Pltf Walter L. Jones Dev. Corp. Inc.' certificate of service of notice of appeal
20	436	Filed certified copy of Order of the U.S. court of Appeals dismissing appeal for lack of jurisdiction, granting motion for sanction, imposing double costs and awarding $250.00 as attys fees on this motion jointly against Walter L. Jones and James A. W. McLeod, Esq., each to bear ½ of the costs, without prejudice to appellees right to seek further orders from the District Court, etc.
Jun15	437	Filed Pltfs' Notice of Appeal (cy. mailed to Messrs. Beilwech, Lipsitz, Giroux, Randazzo, Silverstein, Gorski, McDermott, Cooney, Clack, Terranova, Damon & Morey, Jenny, Bartolomei, Runal, Broderick & Shoemaker, King, Cream, Mistrett, & to Clerk, CCA w/cy. of dkt entries, CCA's Forms C & D given to Mr. Jones)
16	438	Filed Pltfs' Form D - Transcript ordered
26		Rec'd CCA scheduling order - Record due 7-17-87
29	439	Filed Pltfs' amended notice of appeal (cy mailed to Messrs. Beilwech, Lipsitz, Giroux, Randazzo, Silverstein, Gorski, McDermott, Cooney, Clack, Terranova, Damon & MOrey, Jenny, Bartolomei

1987

Jun29	439	(Cont) Runal, Broderick & Shoemaker, King, Cream, Mistrett, & Clerk , CCA w/last page of dkt. entries)
Jul 6	440	Filed cert cy. of order of the U.S. Ct of Appeals granting Pltf's motion to dismiss the appeal w/o prejudice (Mag. Maxwell)

United States District Court
Western District of New York
A TRUE COPY
EDWARD P. GUETH, JR.
BY Tracy L. Novicki
Deputy Clerk

CLOSED

APPENDIX CC

TRANSCRIPT OF PROCEEDING HELD BEFORE MAGISTRATE MAXWELL ON JANUARY 16, 1987

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES

Plaintiff

vs.

CIV 80-1075E

NFTA, et al,

Defendants.

Proceedings held before the HONORABLE EDMUND F. MAXWELL, United States Magistrate, in the United States Courthouse, 68 Court Street, Buffalo, New York, on January 16, 1987, commencing at 3:30 P.M.

PRESENT:

WALTER L. JONES

JAMES A. W. McLEOD, ESQ.

MARY GREGORY, ATTORNEY -AT-LAW

RICHARD LIPSITZ

JOHN J. COONEY,ESQ.

PAUL PERLMAN, ESQ.

RICHARD A CLACK, ESQ.

PRESENT: MAURICE MILLER, ESQ.

JOSEPH B. MISTRETT, AUSA.

GERALD GAMBINO, ESQ.

E. JOSEPH GIROUX, ESQ.

MICHAEL BEILWECH JR. ESQ.

DOUGLAS CREAM, ESQ.

JOHN JENNY, ESQ.

JAMES SCHMIT, ESQ.

JOHN J. Del MONTE, ESQ.

JAMES J. HAGERTY, JR.
REPORTER

THE COURT: I'm going to make a statement before we start. It will be part of the record. Presently before this Court, as I understand it and I am subject to correction, are the following matters. One, a motion by the Plaintiff corporation who'll be referred to as the Jones Corporation represented by Mr. McLeod, to amend the complaint, and as I understand it, some seven different instances, which are attached to the affidavit of Mr. McLeod, various affidavits of Mr. McLeod, relating to that particular motion. There's also an affidavit of Mr. McLeod, under file docket number 352, which attempts to correct the amended complaint, filed under docket number 350, relative to time frame and chronology. There's also a document labeled a Notice of Joined Motion, which was filed December 9th, 1986, consisting of docket entries number 353 and 354, by Walter Jones, as an individual. As I understand that motion if seeks reconsidera-

tion of various orders of Judge Elfvin, which dismissed his original complaint, individual complaint in this action. This motion also seeks to substitute and join other parties who have been previously dismissed as defendants in this action and join additional new parties who are officers and employees of corporations that have been dismissed as Defendants. Motion also seeks to join parties as defendants who allegedly are legal representatives of deceased former defendants. For the reasons set forth in Judge Elfvin's various decisions and orders on April 21st-- 22nd, 1981 under docket 353, February 12, 1985, under docket number 206, April 11th, 1985 under docket number 227, and his order and decision of October 16th, 1985, under docket number 321. The motion of Mr. Jones, as an individual to serve any type of supplemental pleadings or amended pleadings is denied. Mr. Jones seeks to contend that these are non-final orders, they are not the law of the case,

and they can be considered by me. While in a legal sense Judge Elfvin's orders may be considered non-final, they are only such to the extent that, at this time, Mr. Jones as the individual plaintiff does not have the permission, nor can he appeal those orders to the Second Circuit. And, such a right to appeal will not come into play until this entire case is decided. I do believe that Judge Elfvin's orders are the law of the case, should be followed. Even if I have the authority to reconsider or change those orders, which I do not have, based upon my review of the record in the case, no change in his orders should be made. Thus Mr. Jones as an individual is not presently a party to this case. And, thus will not be allowed to participate further in this hearing. As to the motion of Mr. McLeod or the motion of the corporation represented by Mr. McLeod -- Mr. McLeod, I'm going to ask you at this time, you have received various motions for sanc-

tions, you have had, as I understand it, a full and complete opportunity to review all of the prior record in this proceeding. You are aware of all of the orders which have been entered by this court and all of --by Judge Elfvin and all the proceedings which have taken place here today. As an officer of this court I must assume that you have knowledge of all of the proceedings which have taken place, and knowledge of the content of all of those orders. On that basis, sir, is it your intention to proceed on the motion which you have filed for the relief which you have sought?

MR. McLEOD: Your Honor, in light of your determination dealing with Mr. Jones individually, which I think is an integral part of the overall motion that the corporation has brought, based on that fact, at this time I would not be in a position to proceed -- would not proceed.

THE COURT: Well, on behalf of the corporation, are you saying?

MR. McLEOD: On behalf of the corporation, yes.

THE COURT: Are you withdrawing your motion, sir?

MR. McLEOD: Now, when you say motion, Judge, there had been two motions that were filed. One relative to the initial amendment and then there was one that was filed in response to the application seeking sanctions.

THE COURT: What motion are you referring to is that --

MR. McLEOD: In opposition to relief of sanctions that's been sought by counsel for the defendants.

THE COURT: Could you give me the date of filing of that or the affidavit or the docket number, sir?

MR. McLEOD: That would be dated January 2, it would be in a volume of about this size, Judge.

THE COURT: Is that what is referred to as a Notice of Supplemental and Cross Motion for Declaratory Relief Permanent Preliminary Injunction and Imposition of Sanctions?

MR. McLEOD: Yes.

THE COURT: Well, as to that which was filed on January 8th, 19 -- 1987, and as I understand it, this was filed by Mr. Jones, acting pro se and by you, sir. as attorney for the plcintiff corporation?

MR. McLEOD: Yes.

THE COURT: I have previously forwarded a letter to all parties involved, indicating that I do not have -- that I do not consider that I have the authority to determine that case, I have read it, I am aware of the fact that on that date Mr. Jones, as an individual and corporation through you, as its attorney, filed these documents, with the title, which I have previously mentioned. In reviewing these papers, it seems to indicate

to me that Mr. Jones, individually, relying on the proposed amended and supplemental complaint dated, November 28th, 1986, and which was filed, I believe, on November 10th, 1986, under docket number 350, and supposedly amended by your supplemental affidavit, filed December 9th, 1986, under docket number 352, seeks a declaratory judgement, as well as preliminary and permanent injunctions, restraining the defendants from interferring with his rights. You, by your affidavit, sworn to on January 2nd, 1987, seek the same relief on behalf of Mr. Jones as an individual and on behalf of the plaintiff corporation. Inasmuch as the matters which are recently -- inasmuch as this case was referred to me, pursuant to 28 USC 636 B-1a, by Judge Elfvin's order of October 15th, 1986. I'm sorry, '85. I do not believe that I have authorization to hear that motion, in as much as it seeks dispositive relief and I'm not going to consider it, at this time, sir. I am going to suggest to you , however, though having read that, it would

seem to me that this application in the face of all the directives that Judge Elfvin has set out in all of his prior proceedings and all of his prior orders. The reason I am asking you, Mr. McLeod, if you intend to proceed, is because we are all aware of Rule 11, all aware of rule 11 being a recent enactment of the Courts, andjust so that there's no question raised, as I understand it, the signature of an attorney constitutes a certificate by him that he has read the pleadings, motions or other papers, to the best of his knowledge, information and belief, formed under reasonable inquiry, it is well grounded in fact and is warranted by existing law, or a good faith aragument for the reversal or modification or extention of existing law. And, that it is not interposed for any improper purpose, such as to harrass, or to cause unnecessary delay or needless increase in the cost of litigation. Now, you tell me, Mr. McLeod, if you intend to continue

with the motion, which you have filed on behalf of the corporation?

MR McLEOD: Your Honor, again, could I have a few moments to discuss something with Mr. Jones?

THE COURT: Feel free to.

MR. McLEOD: Thank you, Judge,

THE COURT: Mr. McLEOD?

MR. McLEOD: Judge,, based on the rulings that you have made here today, and after discussing the corporate position with Mr. Jones, we would be in a position of having to withdraw the motion that's before the Court.

THE COURT: I am going to advise you, Mr. McLeod, that it would seem to me, based upon everything that I have read in this case, that nothing will be served by an request for further amendments of these plead-

ings. Now, any such motions will be brought before me, pursuant to the referral of Judge Curt--Elfvin. I'm going to specifically read to you -- I'm certain you're aware of it. At page thirteenth 13 -- which says further amendment ot the complaint at this stage of the proceedings would appear to be a futile effort. One of the reasons, as I understand it stated by -- indicated by Judge Elfvin for the belief, was because, I believe in May of 1983, I may be wrong on the date. I'm sorry, it was May of 1985, after the proposed Summons and Complaint, amended and supplemental civil rights complaint had been filed in this Court as part of the application of Barbara Sims, as then attorney for the corporation, indicated that the court was accepting that complaint, so that it gave the plaintiff an opportunity to fully set out all of the claims which he had in this case and I believe it was on the impression and on the understanding that no further amendments would be granted. This allowed the plaintiff

to amend the complaint, to set out for once and for all, its claims in a manner satisfactory to it. As you know, as all counsel know, there have been at least ten, I believe and some defendants claim more, amended complaints filed in this proceeding, and the Court prior to this time or prior to October of 1985 has granted the plaintiff's request in at least four of those occasions and maybe more, So, I'm going to assume that there are going to be no more amended complaints filed in this procceeding. So if you feel that there's any thought that you intend to bring them at any time in the future, you might as well argue the motion right now.

MR. McLEOD: Well, Judge, again based on your earlier ruling, when I say earlier that is this afternoon, I don't think that that would be possible.

The remaining pages, (12 - 26) are ommitted.

I have read the foregoing pages and certify that they are a true and accurate transcription of the proceedings in this case.

_____

JAMES J. HAGERTY, JR.

APPENDIX DD

ORDER ISSUED BY MAGISTRATE MAXWELL
ON JANUARY 28, 1987, PURSUANT
TO PROCEEDING HELD ON
JANUARY 16, 1987

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES DEVELOPMENT CORP.,
Plaintiff,

v. CIV 80-1075E

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA), et al,
Defendants.

SIR/MADAM; Take notice of an ORDER, XXXXX of which the the within is a copy, duly granted in the within entitled action on the 28th day of January, and entered in the office of the Clerk of the United States District Court, Western District of New York, on the 28th day of January.

Dated: Buffalo, New York
January 28, 1987

Douglas Cream
Roy King, Esq.
Runals, Broderick & Shoemaker
John Bartolomei, Esq
John Jenny, Esq.
Damon & Morey
Dominic Terranova, Esq.
James Gresens, Esq.

Edward P. Gueth, Jr., Clerk
United States District Court
Western District of New York
Room 604 U.S. Courthouse
Buffalo, New York 14202

cc: John J. Cooney, Esq.
William McDermott, Esq.
Jerome Gorski, Esq.
Victor Silverstein, Esq.
Joseph Randazzo, Esq.
E. Joseph Giruox, Esq.

Richard Lipsitz, Esq.
Michael Beilwech, Esq.
James A. W. McLeod, Esq.
Walter L. Jones
Joseph mistrett, AUSA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES DEVELOPMENT CORP.,
Plaintiff,

v. CIV 80-1075E
ORDER

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA), et al,
Defendants.

Pursuant to the order of the Hon. John T. Elfvin the above matter has been referred to me for pretrial procedures and the determination of non-dispositive motions.

in November 1986 the plaintiff corporation filed a motion for leave to file an amended complaint in this action. In December 1986 Walter L. Jones, who at one time had been a plaintiff in this proceeding and whose cause of action had previously been dismissed by Judge Elfvin, filed a motion for reconsideration of the dismissal of his complaint and for permission to file an amended complaint in the proceeding. Many of the defendants herein have filed affidavits in opposition to both motions and have further filed motions for sanctions pursuant to Rule 11 Fed.R.CivP.. On January 8, 1987

the plaintiff corporation and Mr. Jones, individually, filed a "Notice of Supplemental and Cross-Motion for Declaratory Relief Permanent and Preliminary Injunction and Imposition of Sanctions" under Docket No. 359.

On January 16, 1987 a hearing was held before me as to the various outstanding motions. James McLeod, attorney for the plaintiff corporation, and Walter L. Jones were present as were attorneys for many of the defendants and many of the persons sought to be brought in as defendants in the proposed amended complaint.

A review of the file by me reveals that since the institution of this action in 1980 the plaintiff corporation and Mr. Jones have filed at least ten motions for permission to amend the complaint and permission has been granted by the court on at least four occasions. On October, 16, 1985 Judge Elfvin stated that "Jones is not a party to this case and further submissions by him or attempts by him or others to circumvent that decision will be of no effect". Based upon that statement of Judge Elfvin and based upon previous orders by him

dismissing the complaint as it related to Mr. Jones' individual cause of action, I advised counsel that the motion of Mr. Jones to amend the complaint would be denied. Thereupon Mr. McLeod, as attorney for the plaintiff corporation, after consultation with Mr. Jones, advised the court that he desired to withdraw the motion by the plaintiff corporation to amend the complaint. I subsequently advised counsel that defendants' motions for sanctions would be denied.

Discussions were held with counsel relative to the Notice of Supplemental and Cross-Motion filed by the plaintiff corporation and Mr. Jones on January 8, 1987. I had previously advised all counsel that because of the relief sought therein the motion, which was made returnable before me on January 16, 1987, would not be heard by me. Mr. McLeod advised that inasmuch as the motion was premised on the granting of the motion to amend the complaint. no basis would exist for pursuing this motion for declaratory relief at this time Mr. McLeod thus advised the court that such Notice of Motion as filed

on January 8, 1987 was withdrawn inasmuch as Walter L. jones is not a party to the action.

Pursuant to notice previously served on all parties, a pretrial conference was also held. I had previously directed that all parties advise as to the discovery required and the time within which it could be completed. Mr. McLeod, as attorney for the plaintiff, stated that it was his belief that all discovery could be completed within a period of approximately four months, and no objections to that time frame was voiced by any of the parties. A review of the history of this case indicates that since its inception in 1980, none of the defendants have served any interrogatories. Plaintiff has served numerous interrogatories and defendants have served answers and objections thereto, and the interrogatories have been the subject of various court orders. The parties have thus had adequate opportunity to conduct their discovery. Because of the age of this case and the extensive proceedings heretofore had, it is my belief that restrictions on future discovery as hereinafter ordered can justifiably be placed on the parties

so that the matter can be brought to a prompt conclusion.

Based upon the foregoing, it is

ORDERED AS FOLLOWS:

1) The motion of WALTER L. JONES to amend the complaint so as to permit him to reenter this proceeding as an individual plaintiff herein is DENIED.

2) The application of the plaintiff corporation to withdraw its motion to amend the complaint herein is GRANTED with prejudice.

3) All motions by the defendants for sanctions are DENIED.

4) Upon application of plaintiff's counsel, the motion for declaratory relief and other relief filed January 8, 1987 is withdrawn.

Pursuant to Rule 16 FedR.Civ.P., the following Pretrial Order is entered:

1) No further motions to amend the complaint shall be filed.

2) Neither plaintiff nor any defendant shall be required to further respond to any interrogatories previously filed.

3) No further interrogatories shall be filed

without leave of the court upon application showing why the discovery sought cannot be obtained by oral depositions or requests for production of documents.

4) in the event any party desires depositions of any other party or witness, notices of such depositions shall be filed and served by February 27, 1987. In the event any party desires production of documents, notices to produce shall be filed and served on or before February 27, 1987.

5) All discovery shall be completed by June 30, 1987, and all motions to compel discovery shall be made returnable at least 30 days prior to said date;

6) A further pretrial conference will be held with the undersigned at 414 U.S. Courthouse, Buffalo, New York, on July 14, 1987 at 2:00 p.m. to discuss the possibility of settlement. In the event settlement is not effected at such pretrial conference, counsel will be directed to file Pretrial Statements in accordance with Local Rule 16D within two weeks thereafter.

No extension of the above-mentioned cut-off dates will be granted except upon written

application showing good cause for the extension. Counsels' attention is directed to Fed.R. Civ.P. Rule 16(f) calling for sanctions in the event of failure to comply with any direction of the court.

If counsel are of the belief that an intermediate conference with the court would be of assistance in the prompt disposition of the case, such a conference will be scheduled upon application of any party.

So ordered.

_____

Edmund F. Maxwell
United States Magistrate

DATED: Buffalo, New York
January 28th, 1987

APPENDIX EE

ORDER ISSUED BY JUDGE ELFVIN ON FEBRUARY 4, 1987

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES DEVELOPMENT CORPORATION,

Plaintiff,

-v- CIVIL 80-1075E

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, et al.,

Defendants.

SIR/MADAM: Take notice of an ORDER, & NOTICE of which the within is a copy, duly granted in the within entitled action on the 4th day of February, and entered in the Office of the Clerk of the United States District Court, Western District of New York, on the 4th day of February.

Dated: Buffalo, New York

February 4, 1987

Walter L. Jones
James A. W. McLeod, Esq.
Michael Beilwech, Jr., Esq.
Richard Lipsitz, Esq.
E. Joseph Giroux, Esq.
Joseph Randazzo, Esq.
Victor Silverstein, Esq.
cc: Jerome C. Gorski, Esq.
William McDermott, Esq.
John J. Cooney, Esq,
James Gresens, Esq.
Dominic Terranova, Esq.
U.S. Attorney ,
Douglas Cream, Esq.

Edward P. Gueth, Jr., Clerk
United States District Court
Western District of New York
Room 604 U.S. Courthouse
Buffalo, New York 14202

Damon & Morey
John Jenny, Esq.
John Bartolomei, Esq
Runal Broderick Shoemaker
Roy King Esq.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES DEVELOPMENT CORPORATION,

Plaintiff,

-v- CIVIL 80-1075E
ORDER

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, et al.,

Defendants.

Walter L. Jones has been deined permission to reenter this proceeding as an individual (Order of Magistrate Maxwell, January 28th 1987) following the dismissal of his cause of action (Order of this Court October 16, 1985). Inasmuch as he is no longer a party to this action, Mr. Jones' "Amended Notice of Motion" is without effect and will not be addressed by this Court.

Dated: Buffalo, N.Y.
February 4, 1987

JOHN T. ELFVIN
U.S.D.J.

APPENDIX FF

PLAINTIFFS' JOINT NOTICE OF APPEAL
FILED ON FEBRUARY 19, 1987

ORIGINAL
RECEIVED AND FILED
United States District Court
Western District of New York
FEB 19 1987
BY: C. WRIGHT
Dep. Clerk

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

WALTER L. JONES, and
WALTER L. JONES DEVELOPMENT CORPORATION, INC.,
Plaintiffs,

File Number 80-1075E

vs.

NOTICE OF CONSOLIDATED APPEAL

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL,
Defendants.

NOTICE IS HEREBY GIVEN that Walter L. Jones Pro se, for himself, and Walter L. Jones Development Coproration Inc., through its attorney, as Plaintiffs, above named, hereby appeal to the United States Court of Appeals for the Second Circuit, under the provisions of Section 1292 (a) (1) of 28 USC, from the District Court's order entered on February 4, 2987, and from the U.S. Magistrate's order, entered on January 28, 1987, upon the grounds that said orders refused to hear and consider Plaintiffs' motion for injunctive relief, declaratory relief, the validity of prior orders and a judgement, and other multiple relief, and upon the grounds that the orders were entered in a manner inconsistent

with due process of law, which are vehicles of injustices, that will cause the Plaintiffs to suffer irreparable injuries, and upon the grounds that certain Defendants' attorneys have moved for the imposition of sanctions, as against the Plaintiffs, for the Plaintiffs' exercising their constitutional rights.

Dated: Buffalo, New York

February 19, 1987

BY:

WALTER L. JONES, Pro se
for himself as Plaintiff
204 Kings Highway
Snyder, New York 14226
(716) 839-2696

BY:

JAMES A. W. McLEOD, ESQ.
Attorney for Plaintiff,
Walter L. Jones Dev.
Corp., Inc.
P.O. Box 1585
Ellicott Station
Buffalo, New York 14205
(716) 852-0585

APPENDIX GG

PLAINTIFFS' JOINT NOTICE OF CROSS MOTION FOR A STAY OF ALL PROCEEDINGS, PENDING APPEAL FILED ON FEBRUARY 19, 1987

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES, and
WALTER L. JONES DEVELOPMENT CORPORATION, INC.,
Plaintiffs,

CIV NO 80-1075E

vs.

MOTION

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL,
Defendants.

Plaintiff, WALTER L. JONES PRO SE, for himself, and Plaintiff, WALTER L. JONES DEVELOPMENT CORPORATION, INC., through its attorney move this Court for an order, staying all further proceedings, pending a determination of Plaintiffs' consolidated appeal to the U.S. Court of Appeals for the Second Circuit, pursuant to Rule 62 (C) of the Federal Rules of Civil Procedure, upon the grounds as set forth by the affidavits in support of this motion, annexed hereto.

Dated: Buffalo, New York
February 19, 1987

WALTER L. JONES, Pro se
for himself
204 Kings Highway
Snyder, New York 14226
(716) 839-2696

JAMES A. W. McLEOD, ESQ.
Attorney for Plaintiff,
Walter L. Jones Dev.
Corp., Inc.
P. O. Box 1585
Ellicott Station
Buffalo, New York 14205
(716) 852-0585

APPENDIX HH

AO 456 NOTICE (STAYING) ALL MATTERS
SINE DIE, PENDING APPEAL,
DATED FEBRUARY 20, 1987

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

JONES, etc., et al

v.

N.F.T.A., et al

NOTICE

CASE NUMBER: CIV-80-1075E

TYPE OF CASE

[XX] CIVIL [ ] CRIMINAL

TAKE NOTICE that a proceeding in this case has been set for the place, date and time set forth below

PLACE	ROOM NO
	DATE AND TIME

TYPE OF PROCEEDING

[XX] TAKE NOTICE that the proceeding in this case has been continued as indicated below:

ALL PENDING MATTERS, SINE DIE, PENDING PLTF APPEAL TO C.A.2. filed 2/19/87

PLACE	DATE AND TIME PREV. SCHEDULED	CONTINUED TO DATE AND TIME
Part II U.S. DISTRICT COURT BUFFALO, N.Y. 14202	3/2/87 at 4:00 P.M.	SINE DIE, PENDING APPEAL

EDWARD P. GLEITH, JR.
U.S. MAGISTRATE OR CLERK OF COURT

2/20/87
DATE

EDWARD P. GENTNER
BY: DEPUTY CLERK

to: SEE ATTACHED DIST. LIST.

APPENDIX JJ

TRANSCRIPT OF PROCEEDING HELD
HELD IN MARCH 2, 1987
BEFORE MAGISTRATE MAXWELL

Proceedings held before the Honorable EDMUND F. MAXWELL, 414 United States Courthouse, Buffalo, New York 14202, taken on March 2, 1987, commencing at 215 P.M., before JACQUELINE M. KELLY, C.P., R.P.R., Notary Public.

MR McLEOD: Judge, the correspondence that was sent by Mr. Jones, and comments and/or conversations I may have had with Mr. Jones subsequent to that, are two separate and distinct things. I simply advised Mr. Jones earlier, last week, that we were going to be appearing today for purposes of this deposition. This letter, as I indicated, this is the first time I've seen it. Mr. Jones did not indicate to me he had sent it, and Mr. Jones did not indicate to me, based on my advising him that we were going to be here Monday, that he wasn't going to appear.

THE COURT: I cant help but notice, in my prior experience in this courtroom, Mr. Jones has always been present when there have been hearings or matters involving his corporation. Is this the first time that he has not appeared?

MR McLEOD: This is probably the first time Mr. Jones has not been served in the middle of a court proceeding, either, Judge. The only reason I'm here is because of your phone call to Judge Marshall's Court and my getting these

papers.

THE COURT: Is he aware of the fact of this hearing?

MR McLEOD: No, Judge. Unfortunately, Judge Marshall did not let me have an opportunity, did not allow me to stop in the course of my cross-examination to call Mr. Jones.

MR GIROUX: I'd like to say just a couple of words.

THE COURT: Mr. Giroux.

MR GIROUX: At four o'clock on Friday afternoon, Mr. Jones appeared at my office with a Notice of Motion, signed not only by Mr. Jones, but by Mr. McLeod, the Notice of Motion to the Second Circuit for a stay of proceedings. I opened the packet rather quickly, and rushed out of the office to catch Mr. Jones -- this is four o'clock Friday afternoon -- if he intended to be at the deposition on Friday or this morning at ten o'clock. His reply to me was no, I don't, it's in the papers, I'm asking for a stay and Mr. McLeod's asking for a stay.

THE COURT: As I understand it, Mr. McLeod has indicated to that he does not -- that a stay would not be called for.

MR.McLEOD: A stay wouldn't stop the depositions.

STATE OF NEW YORK

COUNTY OF ERIE

I, JACQUELINE M. KELLY, a Notary Public in and for the State of New York, County of Erie, DO HEREBY CERTIFY that the proceedings were taken down by me in a verbatim manner by means of Machine Shorthand, on March 2, 1987. That the proceedings were then reduced in writing under my direction. That the proceedings were taken to be used in the above entitled action.

I further CERTIFY that the above-described transcript constitutes a true and accurate and complete transcript of the testimony.

JACQUELINE M. KELLY, C.P., R.P.R.,
Notary Public.

APPENDIX KK

ORDER ISSUED BY MAGISTRATE MAXWELL,

ON MARCH 9, 1987

FILED ON MARCH 10, 1987

ORDERING PETITIONER JONES TO PRODUCE

DOCUMENTS AND ANSWER ORAL

DEPOSITION QUESTIONS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES, and
WALTER L. JONES DEVELOPMENT CORPORATION, INC.,

Plaintiff,

vs. CIVIL 80-1075E

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, et al.,

Defendants.

SIR/MADAM: Take notice of an ORDER, XXXXX of which the within is a copy, duly granted in the within entitled action on the 9th day of March, and entered in the Office of the Clerk of the United States District Court, Western District of New York, on the 10th day of March.

Dated: Buffalo, New York

March 10, 1987

cc: Walter L. Jones
James A. W. McLeod, Esq.
Michael Beilwech, Jr., Esq.
Richard Lipsitz, Esq.
E. Joseph Giroux, Esq.
Joseph Randazzo, Esq.
Victor Silverstein, Esq.
Jerome C. Gorski, Esq.
William McDermott, Esq.
John J. Cooney, Esq,
Richard Clack, /Esq.
Dominic Terranova, Esq.
Damon & Morey
John Jenny, Esq.
John P. Bartolomei, Esq.
Runal Broderick & Shoemaker
Roy King, Esq.
Douglas Cream, Esq.
Joseph Mistrett AUSA
Edward P. Gueth, Jr.
Clerk
U.S. District Court
Western Dist of NY
Rm 604 US Courthouse
Buffalo, N.Y. 14204

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES, and
WALTER L.
JONES DEVELOPMENT CORPORATION, INC.,
Plaintiffs,

-v- CIVIL 80-1075E

NIAGARA FRONTIER TRANSPORTATION
AUTHORITY, ET AL.,
Defendants.

Upon an Order to Show Cause dated March 2, 1987, the affidavit of Paul I Perlman, sworn to on the 2nd day of March, 1987, with exhibits attached thereto, and upon all pleadings and proceedings heretofore had herein, and the motion having been made on its return date, March 2, 1987, and counsel having appeared as set forth in the transcript of the motion agrument which will be filed with this Court, and due deliberation having been had, it is hereby

ORDERED that the time of Walter L. Jones Development Corporation to serve deposition notices is extended until April 1, 1987; and it is further

ORDERED, that Walter L. Jones Development

Corporation will appear by its president, Walter L. Jones, and give deposition testimony on March 16 through 19, 1987 beginning at 9:30 a.m. each day at the offices of Hodgson, Russ, Andrews, Woods & Goodyear, 1800 One M & T Plaza, Buffalo, New York; and it is further

ORDERED, that plaintiff, Walter L. Jones Development Corporation, Inc. produce documents in response to defendants' deposition notices at the offices of Hodgson, Russ, Andrews, Woods & Goodyear, 1800 One M & T Plaza, Buffalo, New York, no later than 5 p.m. on Wednesday, March 11, 1987; and it is furrther

ORDERED, that a decision on defendants' motion for expenses against Walter L. Jones is reserved until such time, if ever, that attorneys for one or more defendants applies for a hearing on such costs; and it is further

ORDERED, that defendants' motion for expenses against James A, W, McLeod, Esq., is denied.

ENTER: 3/9/87

EDMUND F. MAXWELL
U.S. MAGISTRATE

APPENDIX LL

TRANSCRIPT OF DEPOSITION PROCEEDING HELD ON MARCH 16, 1987

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

WALTER L. JONES and
WALTER L.JONES DEVELOPMENT CORPORATION, INC.,

Plaintiffs,

-vs-

NIAGARA FRONTIER TRANSPORTATION AUTHORITY
(NFTA)

181 Ellicott Street
Buffalo, New York 14205

and

JAMES H. WOLFORD, GEORGE L. WESSEL,
RICHARD C. SOUTHARD,JOHN F. DOWNING,
WILLIAM G. GISEL, JOHN F. KOPCZYNSKI,
WILLIAM H. WENDEL, JACK BAYER, CHESTER R.HARDT,
GEORGE J. TRIMPER, ALFONSE V. BELLANCA,
TIMOTHY J. TOOHEY, ERNESTINE R. GREEN,
JACOB F. SCHOELLKOPF, V., JAMES E. KELLY,
KENNETH G. KNIGHT, WILLIAM BULOW,
ROBERT D. GIOIA, RONALD J. ANTHONY,
RICHARD F. GALLAGHER, THEODORE BECK.

and

URBAN MASS TRANSPORTATION ADMINISTRATION
(UMTA)

and

HIRAM J. WALKER, BROCK ADAMS, ROBERT PARTRICELLI, JOSE CAMALLONGA, RICHARD S. PAGE, HAROLD B. WILLIAMS, WESLEY A. PLUMMER, WILHEMENIA BURKE, ARTHUR B. TEFLE, ANDREW LEWIS (Officials and Administrators)
400 7th Street, S.W. Washington, D.C. 20509

DENALL, VITRANO AND ASSOCIATES
REGISTERED PROFESSIONAL REPORTERS
CERTIFIED SHORTHAND REPORTERS
CONVENTION TOWER BUILDING
BUFFALO, NEW YORK 14202

DEPOSITIONS ARBITRATIONS CONVENTIONS

DAILY COPY COMPUTER AIDED TRANSCRIPTIONS

COLOR VIDEOTAPE

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and

NEAL CAVANAUGH and SIEGFRIED CONSTRUCTION
CO., INC.,
3980 Sheridan Drive
Buffalo, New York 14224

and

JOHN J. SANDERS and SLATTERY ASSOCIATES, INC.,
46 54th Rod
Maspeth, New York 11378

and

HERBERT F. DARLING and HERBERT F. DARLING, INC.,
131 Califocnia Drive
Williamsville, New York 14221

and

IRVING FRANCIS and JOHN W. COWPER CO., INC.,
4246 Ridge Lea Road
Amherst, New York 14240

and

S.H. BARTHOLOMEW and FRUIN-COLNON
TOM TRAYLOR/ TRAYLER BROS.,
WILLIAM STERLING and ONYX CONSTRUCTION &
EQUIPMENT CO.,
1706 Olive Street
St. Louis, Missouri 33103

and

JOHN M. FUHRMANN and CONSTRUCTION
INDUSTRY EMPLOYERS ASSOCIATION
625 Ensminger Road
Tonawanda, New York 14150

and

DONALD J. BLAIR and
BUILDING TRADES COUNCIL OF BUFFALO AND VICINITY
175 Great Arrow Avenue
Buffalo, New York 14207

RONALD M. FINO and LABORERS LOCAL UNION NO. 210
481 Franklin Street
Buffalo, New York 14202

JOSEPH F. COLERN and MICHAEL FITZPATRICK
IRON WORKERS LOCAL UNION NO. 6
196 Orchard Park Road
Buffalo, New York 14224

LEONARD S. CONIGLIO and CEMENT MASONS LOCAL
UNION NO.511
685 Elmwood Avenue, Room 206
Buffalo, New York 14222

HERMAN F.BODEWES & CARPENTERS DISTRICT COUNCIL
300 Kensington Avenue
Buffalo, New York 14222

LEO HOPKINS and OPERATING ENGINEERS LOCAL
UNION NO. 17, 17A, 17B
150 Commerce Street
West Seneca, New York 14224

LAWRENCE J. STROH and NATIONAL ELECTRICAL
CONTRACTORS ASSOCIATION WESTERN NEW YORK
CHAPTER
361 DelawareAvenue
Buffalo, New York 14202

PLUMBING CONTRACTORS ASSOCIATION OF ERIE
COUNTY,N.Y. INC.
282 Delaware Avenue
Buffalo, New York 14202

ALBERTELIA BUILDING COMPANY, INC.,
LAWRENCE A. ELIA (Officer)
2749 Lockport Road
Niagara Falls, New York 14302

S & M CONSTRUCTORS, INC.,
JOHN DenBESTE, ELTON T. GRANT
28125 Hall Street
Salon, Ohio 44129

AFL-CIO COUNCIL and
GEORGE L. WESSEL
686 Ellicott Square Building
295 Main Street
Buffalo, New York 14203

CONSTRUCTION INDUSTRY COALITION
FOR ECONOMIC RECOVERY WESTERN NEW YORK
(Coalition) and BERNARD J. SHEVLIR,
DONALD J. BLAIR and ROBERT M. LOGAN
1150 Wherle Drive
Williamsville, New York 14221

MECHANICAL CONTRACTORS ASSOCIATION OF
BUFFALO & VICINITY, INC., (Association) and
MARSHALL DAVIS (Official)
374 Delaware Avenue
Buffalo, New York 14202

BOILER MAKERS EMPLOYERS OF BUFFALO &
VICINITY (LOUIS D.MADIA (Official)

GREATER BUFFALO SHEET METAL &
ROOFING ASSOCIATION
PAUL GILBERT (Official)
961 A Maryvale Drive
Cheektowaga, New York 14225

ASBESTOS WORKERS LOCAL UNION NO. 4
JACK KELLEHER (Official)
186 Washington Highway
Snyder, New York 14226

BOILER MAKERS LOCAL UNION NO 4
JOHN BARRY JARZYNSKI (Official)
196 Orchard Park Road
West Seneca, New York 14224

BRICKLAYERS LOCAL UNION NO. 45
JAMES JOSEPH McGOVERN
1807 Elmwood Avenue
Buffalo, New York 14207

ELECTRICAL WORKERS LOCAL UNION NO. 41
MELBORNE H. RICH (Official)
S. 3564 California Road
Orchard Park, New York 14127

ELEVATOR CONSTRUCTORS LOCAL NO. 14
DONALD M. WINKLE (Official)
1660 Kenmore Avenue, Buffalo, New York 14216

GLAZERS LOCAL UNION NO. 660
JAMES J. COYLE
2175 William Street
Buffalo, New York 14206

LATHERS LOCAL UNION NO. 32
FRANK A. SCIABARRASI (Official)
96 Dewitt Street
Buffalo, New York 14213

PAINTERS DISTRICT COUNCIL NO. 4
JIM V. GRIFFO (Official)
12 Elmwood Avenue
Buffalo, New York 14210

PLASTERERS LOCAL UNION NO. 9
SAMUEL F. ANTONIO (Official)
1373 East Robinson Road
North Tonawanda, New York 14120

ROOFERS LOCAL UNION NO. 74
ANGELO PAGANO (Official)
770 Maryvale Drive
Buffalo, New York 14225

SHEET METAL WORKERS LOCAL UNION NO. 71
GEORGE J. CUDDIHY (Official)
198 Tim Tom Terrace
West Seneca, New York 14224

STEAMFITTERS LOCAL UNION NO. 395
DONALD J. BLAIR (Official)
175 Great Arrow Avenue
Buffalo, New York 14207

TILE, MARBLE, & TERRAZZO WORKERS HELPERS
LOCAL UNION NO. 8
DANIEL J. MECCA (Official)
1238 East Delavan Avenue
Buffalo, New York 14215

TRUCK DRIVERS LOCAL UNION NO. 449
ERWIN M. WALKER (Official)
1685 Elmwood Avenue
Buffalo, New York 14207

PLUMBERS LOCAL UNION NO. 36
LARRY CONELLY (Official)
175 Great Arrow Avenue
Buffalo, New York 14207

INDEX TO WITNESSES

Witness	Examination By	
	Mr. Beilewech	Mr. Perlman
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Examination Before Trial of WALTER L. JONES, Plaintiff, taken pursuant to notice under Federal Rules of Civil Procedure, in the law offices of HODGSON, RUSS, ANDREWS, WOODS, & GOODYEAR, One M & T Plaza, Buffalo, New York 14203, taken on March 16, 1987, commencing at 9:40 A.M., before JACQUELINE M. KELLY, R.P.R. Notary Public.

APPEARANCES:

JAMES A. W. McLEOD, ESQ.,
282 Franklin Street,
Buffalo, New York 14202,
Appearing for the Plaintiff,
Walter L. Jones Development Corporation, Inc.

DOMINIC J. TERRANOVA, ESQ.,
By MARY GREGORY, ESQ., of Counsel
181 Ellicott Street
Buffalo, New York 14203,
Appearing for Niagara Frontier
Transportation Authority (NFTA).

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR,
By PAUL I. PERLMAN, ESQ.,
One M & T Plaza,
Buffalo, New York 14203,
Appearing for Defendants Siegfried
Construction Co., Inc., Slattery
Associates, Inc., Fruin-Colnon
Division of Fru-Con Construction Co.,
Marine Midland Bank, NA, Executor of
Cornelius J. Cavanaugh, deceased,
John J. Sanders, S. H. Barhtolomew.

SCOTT A. BIEHL,
Office of the Chief Counsel,
Urban Mass Transportation Administration
400 7th Street, Southwest,
Washington, D. C. 20590,
Appearing for Urban Mass Transportation
Administration (UMTA), Hiram J. Walker,
Brock Adams, Robert Partricelli,
Jose Camallonga, Richard S. Page,
Harold B. Williams, Wesley A. Plummer
Wilhemenia Burke, Arthur B. Teele, and
Andrew Lewis.

McMAHON & CROTTY,
By E. JOSEPH GIROUX, JR., ESQ.,
1828 Liberty Building
Buffalo, New York 14202,
Appearing for Truck Drivers Local Union
No. 449, Edwin M. Walker (Official),
and Plumbers Local Union No. 36,
Larry Conelly (Official).

GORSKI, GAMBINO & MARRANO,
By JERRY A. GAMBINO, ESQ.,
Suite 201,
120 Delaware Avenue,
Buffalo, New York 14202,
Appearing for George L. Wessel
and AFL-CIO Council.

FLAHERTY, COHEN, GRANDE, RANDAZZO & DORAN P.C.,
By JOSEPH H. RANDAZZO, ESQ.,
210 Firstmark Building,
Buffalo, New York 14202,
Appearing for Construction Industry
Employers Association (John M. Fuhrmann),
Construction Industry Coalition for
Economic Recovery Western New York
(Coalition) and Bernard J. Shevlir.

MAGAVERN & MAGAVERN,
By MICHAEL BEILEWECH, JR., ESQ.,
20 Cathedral Park,
Buffalo, New York 14203,
Appearing for Mechanical Contractors
Association of Buffalo & Vicinity, Inc.

SAPERSTON & DAY, P.C.,
By RICHARD A. CLACK, ESQ.,
1100 Goldome Center - One Fountain Plaza,
Buffalo, New York 14203,
Appearing for John W. Cowper Co., Inc.
and Irving Francis.

PRESENT: JACQUELINE M. KELLY, C.P.,
R.P.R., Notary Public

(Whereupon, the following stipulations were entered into by all parties.)

It is hereby stipulated by and between counsel for the respective parties that the oath of the Referee is waived, that signing, filing and certification of the transcript are waived, and that all objections, except as to the form of the questions, are reserved until the time of trial.

W A L T E R L. J O N E S, 204 Kings Highway, Snyder, New York 1226, after being duly called and sworn, testified as follows:

EXAMINATION BY MR. BEILWECH:

Q. Mr. Jones, I have the honor of being first to put questions to you. Have you been involved in litigation before this matter, Mr. Jones?

A. My answer to any and all questions -- I know I'm called here to testify as a corporate officer and are being asked these questions, but I know that all of you

realize, that there are circumstances which are not resolved. Therefore, my answers to any and all questions. are that I am not at liberty or free to answer any questions, at this time, based upon the grounds that it would be, be further violative of my individual constitutional rights to due process, which are caused by the Court's -- that's appealed -- prior and present decisions being entered in a manner inconsistent with due process of law, which precludes and restrains my individual participation in this meritorious civil rights case, which is now being challenged, on appeal, as being mandatorily void, including the Order that, that, that directed this instrant proceeding.

I have no intentions, whatsoever, of avoiding discovery, but for restraints imposed by the Courts without due process, I am not at liberty, or free to participate at this time, because the lower District Court has divested jurisdiction, over my

person, in this civil rights case, without notice and without hearing, all in violation of my constitutional rights to due process, and I am speaking of my 5th and 14th Amendment, constitutional rights to due process, which I'm certain will be vindicated. Upon the completion of the, the Appellate process, I will be most willing to answer your questions. For we have supplied you with all the material and documents in our possession and still await your compliance with our interrogatories, and the demands therefor, that were served in 1984.

Another reason that I'm not, not at liberty to answer your questions, at this time, is because, as you all are very much aware, I and Attorney McLeod objected to the Amended and Supplemental Complaint, dated April 24th, 1985, and have sought leave to amend that Complaint, which your depositions will be focusing on, which is in a state of uncertainty due to our having

consolidatedly appealed the Magistrate's Order, and the District Court's Orders, entered on January 28, 1987, and on February the 4th, 1987, wherein the issue of amending Complaints will be one of the issues addressed on the appeal, due to this issue being addressed in the lower courts.

More specifically, as you are all aware, I commenced this suit, Pro se, on November 24th, 1980, and I, Pro se, amended the Complaint on December the 29th, 1980, January the 16th, 1981, and on February the 20th, 1981. Whereupon, the state, federal, and a number of other Defendants moved to dismiss the Complaints --

MR. GIROUX: Mr. Jones --

THE WITNESS: -- beginning February the 5th, 1981--

MR. GIROUX: Mr. Jones --

THE WITNESS: -- to and including March the 26th, 1981 --

MR. GIROUX: Would you ask your --

THE WITNESS: -- on March the 30th --

MR. GIROUX: Could you ask him to slow down. The court reporter is having a very difficult time keeping up. I think, if you could just slow down, Walter, for her benefit, not for mine, for the court reporter's benefit.

THE WITNESS: We're going back to, more specifically. As you are all aware, I commenced this action, Pro se, on November the 24th, 1980, and I,Pro se, amended the Complaint on the, December the 29th, 1980, January the 16th, 1981, and on February the 20th, 1981. Whereupon, the federal, state and a number of other Defendants moved to dismiss the Complaints, beginning February 5th, 1981, to and including March 26th, 1981. On March 30, 1981, the District Court Judge, Honorable John T. Elfvin, granted me, appearing for myself, and the late attorney, John L. Hargrave, who was appearing on behalf of the corporation, leave to amend the Complaint, in open

court, directing service upon counsel by April 3, 1981. On April 3rd, 1981, I filed and caused counsel to be served with the "Amended and Supplemental Complaint", dated March 30, 1981, which included a number of individuals and entities, who I alleged to have conspired and discriminated against me, and my corporation, which deprived both of our civil and constitutional rights to participate on the Buffalo Subway Construction Project. On April 22nd, 1981, the District Court, sua sponte, entered -- now if you want me to spell that, S-U-A S-P-O-N-T-E, sua sponte, entered an Order and Judgment, without notice and without hearing, dismissing my individual claims, upon the erroneous grounds that I had no standing to pursue my claims in this case, thus precluding and terminating my participation in this case, without the due process, thus divesting the Court of jurisdiction, over my person, causing a number of subsequent orders to have been

entered in this case, without due process of law. The latter being entered on January the 28th, 1987 and February the 4th, 1987; both of which have been consolidatedly appealed, to the Second Circuit, under the provisions of Section 1291(a) (1), 28 USC, upon the grounds that the appealed Order, and all other challenged Orders, entered on and after April 22, 1981 are mandatorily void, as a matter of law, including the Order compelling this proceeding, which was entered, without notice, or hearing being afforded me, wherein, I based my position upon the following law; Crosby versus Bradstreet Company, 312 F 2nd 483, Second Circuit, 1938, Johnson versus Zerbst, 304 US 458 (1938); Bass versus Hoagland, 132 F 2nd 205, (5th Circuit 1949); Near versus Minnesota 283 US 697 (1931); Klappott versus United States, 335 US 601 (1949); and V.T.A., Incorporated versus Airco, et al, 597 F 2nd (10th Circuit 1979), also see

Federal Rules of Civil Procedure Rule 6034 28 USC. See also 11, C. Wright and A. Miller, supra, note seven at Section 2862, USCA Constitutional Amendment 5.

I further commenced discovery, by Written Interrogatories, on January the 5th, 1981, exactly thirty-nine days after the commencement of this action, wherein the Defendnats only commenced their discovery in January of this year, 1987, which are the basis for this present proceeding, on this, the 16th day of March, 1987, notwithstanding Plaintiffs' Supplemental Interrogatories, and Demands therefor remaining unanswered, and uncomplied with, for over two years, due to the malicious and arbitrary unfairness, and due process violations that have and are continuing to be committed in this action by the lower courts, and the Defendants' attorneys, against my interests, and in furtherance of

the conspiracy to deprive me of my individual constitutional rights to seek redress, in the U.S. District Court, as against all the conspirators, who intentionally deprived me of my individual civil and constitutional rights to have participated on the Buffalo Subway Construction Project. Gentlemen, I think an adjournment would be proper at this time.

BY MR. BEILEWECH:

Q. Except, I answered your Interrogatories, Mr. Jones.

A. You have not.

Q. I have answered them.

A. You answered Interrogatories in the other action.

Q. I answered whatever you served me.

A. That action is not a part of this action.

Q. I'm guilty of not responding to anything you --

A. You responded there. You didn't in this action, did you, yet?

Q. You didn't serve me.

A. I don't know about that.

Q. Well, you didn't.

A. All the other parties have been served, you can be sure of that.

Q. Notwithstanding the stipulation we entered into at the beginning of this session, I'm going to move to striking the whole thing you read into the record as being not responsive to my question.

A. My answer will be the same if you asked me one million times.

MR. BEILEWECH: Mr. McLeod, I have to ask you this. Are you countenancing this activity on the part of the president of the

corporation that we are to depose today?

MR. McLEOD: I am directing, as I indicated to Mr. Jones earlier, as the attorney for the corporation, that we are here to answer the questions that would be put to us, and as corporate officer, he should answer the questions. That's the position that I take in my capacity and the direction that I give him in his capacity as corporate officer.

BY MR. BEILEWECH:

Q. As I understand your answer, Mr. Jones, it had to do with your personal views and your personal situation, rather than that of the corporation, is that correct?

A. If I would respond to that, it would be that it has to do with my individually being the sole stockholder of my corporation, and by having my own individual rights involved, regardless if

the Judge has issued an Order, and the Order is an Interlocutory Order, it was issued without due process, and I'm saying the Order, and all of the Orders, including the Order compelling this particular proceeding, is void, as a matter of law. If we want to get a hearing on these issues, it's time to do that. We haven't done that before. It now has come to the point that we must have a hearing to decide, which is where we're at. I'm saying that is my position. If we are to proceed here, then we've got to get something resolved. I don't have jurisdiction to speak, and then when you want it, and it's convenient for you now, I can speak. No, it's not going to be two ways. There has to be something here, and something here, especially when -- and all these Orders we speak of, even including

this Order, without hearing, giving me a hearing, I cannot have a hearing, but you're going to demand certain things of me. I don't know. My knowledge, my learnings, 'cause I'm not a lawyer, my learnings of the law tell me I have constitutional rights, and I'm going to do everything I can to protect them. If I would answer your questions, focusing on a Complaint, which we --is objectionable, to which is in a state of uncertainty, we don't know -- the Court, I feel, the Court is going to reverse. When its reversed, we'll have a right to amend. Why should I answer questions. Your're going to use that prejudice, because we've already had the discovery. That's my answer, Mr. --

Q. You're going to refuse to answer?

A. I'm not refusing. You heard what I said. My answers are -- I'll read them again, if you want me to.

Q. I don't want you to read them.

A. My answer is the same.

Q. You can save time, you can just say ditto.

A. My answers are just as I stated from the beginning.

Q. Mr. Jones, are you, as president of the Plaintiff corporation, going to answer questions here today, or not?

A. My answers to any and all questions are that I am not at liberty, or free to answer any questions at this time, based upon the grounds that it would be further violative of my individual constitutional rights to due process, which are caused by the Court's prior and present decisions being entered in a manner onconsistent with due process of law, which precludes and restrains my individual participation.

MR. PERLMAN: Mr. Jones, you don't have to read the whole thing.

EXAMINATION BY MR. PERLMAN:

Q. Let me ask you one question. Would you give the same answer you have given to the first questions if you continued on?

A. I have just stated, it would be, if you stated the question a million times.

MR. PERLMAN: Off the record.

(Discussion off the record.)

BY MR. PERLMAN:

Q. Mr. Jones, if I asked you questions on behalf of my clients, and asked you the questions in your capacity as president of the Plaintiff Corporation, would you give the same answer that you gave to Mr. Beilewech's first question?

A. Restate your questions and go a little slower. Now you're going too fast.

MR. PERLMAN: Would you read that back.

(Whereupon, the above-requested question was then read by the reporter.)

THE WITNESS: My answers would be the same to each and every attorney. I don't discriminate.

MR. PERLMAN: And,Mr. McLeod, do I understand--

MR. McLEOD: My directive would be the same in each instance when questions would be posed to Mr. Jones by each attorney.

MR. PERLMAN: Okay. That would be a directive to answer or not to answer?

MR. McLEOD: I think I said before, to answer. that would be the same.

MR. PERLMAN: Okay. Fine. Okay. I have no other questions.

MR. GIROUX: I have a couple simple questions.

MR. BEILEWICH: You want them on the record, Joe?

EXAMINATION BY MR. GIROUX:

Q. Yes, I want them on the record. And, Mr. Jones, if you're going to give the same answer, after I ask the question, just indicate it's the same answer. Mr.Jones, was there a stock transfer from yourself to another individual, the stock of the Walter L. Jones Development Corporation, during the pendency of this action, sometime between 1980 and the present time?

A. The answer is the same as I gave to Mr. Beilewech.

Q. And has there been any transfer of stock, the entire stock, has there been any transfer of stock back to you, during the pendency of this action?

A. The answer is the same as I gave to Mr. Beilewech.

MR. PERLMAN: Does anybody else have any questions for the time being?

MR. GAMBINO: I don't think there would be any point in it.

BY MR. GIROUX:

Q. Well, let me, while we're still on the record. Mr. Jones, you produced -- for all questions, are you going to give that as your answer? You've produced a number of documents. Will you, on the record, if asked to describe what the documents are, that you've produced, describe what they are, or will you give that very same answer that you read into the record?

A. Yes. Just a second, sir. I have to talk to counselor.

(Discussion of the record.)

THE WITNESS: That answer would be yes.

BY MR. GIROUX:

Q. Would be yes, what?

A. I'll have to probably describe everything for you, and I will be more than happy to describe the documents that have been submitted for your review.

MR. BEILEWECH: All right. Mr. Jones would you kindly step over here?

MR. RANDAZZO: Could I ask one question? I expect the same answer and then we could do that.

EXAMINATION BY MR. RANDAZZO:

Q. Mr. Jones, I'm Joseph Randazzo, representing the Construction Industry Employers Association and one half of the Coalition parties mentioned in the Complaint. Other than the identification of documents, if I were to ask you any questions with respect to the

Complaint, the subject matter of the Complaint, would I receive the same answer that you provided to Mr. Beilewech when he commenced asking questions?

A. Exactly the same answer that I provided, no other answers. I'm not free or at liberty to give you any other answers. I've been precluded from participating in this particular case.

MR. RANDAZZO: I understand. That's all I have.

MR. BEILEWECH: I think I'd like to have them marked as he describes them.

THE WITNESS: Yes, because I'm going to take them back with me, my own. I did make copies of some of them.

MR. BEILEWECH: We haven't had a chance to look at these. Are we going to have a chance to look at these?

THE WITNESS: We got all day, all night, and all winter, and that way -- I don't want to identify them until you get a chance to look at them. Whatever way you want it.

BY MR. RANDAZZO:

Q. With respect to the documents, and I heard your answer to the questions that have been asked about the documents in response to Mr. Giroux, in the event that I were to ask you, for instance, to identify all of the documents that are present, that would apply to the client or clients that I represent, would you be willing to so identify them?

A. I would identify the documents as, as documents. I wouldn't identify, getting into any ratification of the individual who it pertains to. I would just identify the documents, these documents that we produced. Every item, I don't mind identifying them as items. I won't go into any

question -- give any answers as to what the relevance or irrelevance of it is.

MR. RANDAZZO: I understand.

RE-EXAMINATION BY MR. BEILEWECH:

Q. What I plan to do is get stickers from the court reporter, and you and I will walk to each box, and if you consent to my being her agent, I will place the sticker on the box and mark the exhibit number that we're talking about.

A. You can mark them as you feel, but I'm going to identify them.

Q. You will identify them?

A. Of course.

Q. I'll just say the first box here will be Exhibit A.

A. Okay.

Q. And we'll put a sticker on it, and call it that, and you tell us what it is.

A. Maybe we can enter them into the record. They might not be in the chronological order, then where are we at then.

Q. That will be all right.

A. We'll just state that you've seen them in this particular form.

Q. Precisely.

A. Okay.

Q. Good. If you want to identify them or show them to us in any particular order, that will be up to you. You tell me what you want to be Exhibit A, B, C and then --

A. All right. Let me see if I can organize it for you.

MR. McLEOD: Off the record.

(Discussion off the record.)

A VOICE: Good morning, Magistrate's office.

MR. PERLMAN: This is Paul Perlman for Hodgson, Russ. I got you on the speaker phone. The Magistrate said to call. We have a question.

A VOICE: Just a second, Mr. Perlman. He is on another call, so hold on, please.

THE COURT: Hello.

MR. BEILEWECH: Hello, Judge how are you?

THE COURT: Fine. Who's this?

MR. BEILEWECH: Michael Beilewech. We're waiting for Paul Perlman to come back.

MR. PERLMAN: Hi, Magistrate. We convened this morning for Mr. Jones' deposition. Mr. Beilewech began the questioning and asked the first question. In response to that question, Mr. Jones read from a statement that he had prepared, declining at this

time to answer questions, because of the purported unconstitutionality of all of the Court's previous Orders, including your Orders, and including the Order requiring Mr. Jones to give his deposition testimony today. We have counsel here today, including Mr. Biehl, who has come up now for the second time from Washington for these depositions, and we wanted to talk with you about what might be done to get this matter moving.

THE COURT: Is Mr. McLeod there?

MR. McLEOD: Yes, Judge, I am.

THE COURT: All right. Who else is there? Mr. Neil from Washington?

MR. PERLMAN: Mr. Biehl.

THE COURT: Biehl. Excuse me, Mr. Beihl.

MR. BIEHL: That's all right, Judge.

MR. PERLMAN: Mr. McLeod, would you like to start and we'll go around this way.

MR. McLEOD: I'm here, Judge, James McLeod, for the Walter L.Jones Development Corporation

MR. BEILEWECH: Michael Beilewech, representing the Mechanical Contractors association.

MR. CLACK: Richard Clack,representing Cowper.

MS. GREGORY: Mary Gregory, representing the NFTA.

MR. RANDAZZO: Joseph Randazzo, Construction Industry Employers Association and the Coalition for Economic Recovery.

MR. GIROUX: Joseph Giroux.

MR. GAMBINO: Jerry Gambino, for George Wessel andthe AFL-CIO Council.

THE COURT: Is that it?

MR. PERLMAN: That's everybody.

THE COURT: What happened to Mr. Lipsitz?

MR. PERLMAN: He decided he would come tomorrow morning to do his questioning, because we would have enough to keep today filled up.

THE COURT: Mr. McLeod.

MR. McLEOD: Yes, Judge.

THE COURT: You know that we've had many discussions about this. If I recall correctly, at the last argument in front of me, it was conceded by you that, the fact that there may be an appeal filed on behalf of either Mr. Jones, who formerly was a party to -- incidentally, is there a reporter?

MR. McLEOD: Yes, it's being transcribed, Judge.

THE COURT: I assume they're recording this.

MR. PERLMAN: Yes.

MR. McLEOD: Yes.

THE COURT: It was conceded that if there was an appeal by Mr. Jones, as a former party to the action, or by the Jones Corporation,

which is still a plaintiff in this action, that that is not any reason for a delay in the continuation of the discovery.

MR. McLEOD: Correct.

THE COURT: Is that correct, Mr.McLeod?

MR. McLEOD: Yes, Judge.

THE COURT: All right.

MR. PERLMAN: Your Honor, just in order to make the picture a full one. Several counsel did ask Mr. McLeod, on the record, whether Mr. Jones' declining to give answers was with or against his advice, and Mr. McLeod did make a statement for the record that it was his advice to Mr. Jones to answer the questions put to him.

THE COURT: Well, may I hear this statement that has been read?

WALTER L. JONES: May I read you the statement, please?

THE COURT: Surely, Mr. Jones.

WALTER L. JONES: My answer to any and all questions, are -- can you hear me, Judge?

THE COURT: Yes.

WALTER L. JONES: My answers to any and questions, are that I am not at liberty, or free to answer any questions, at this time, based upon the grounds that it would be further violative of my individual constitutional rights to due process, which are caused by the Court's prior and present decisions being entered in a manner inconsistent with due process of law, which precludes and restrains my individual participation in this meritorious civil rights case, which is now being challenged, on appeal, as being mandatorily void, including the Order that directed this instant proceeding.

I have no intentions, whatsoever, of avoiding discovery, but for restraints imposed by the Courts, without due process, I am not at liberty, or free to participate at this time, because the lower District Court has divested jurisdiction, over my person, in this civil rights case, without notice and without hearing; all in violation of my constitutional rights to due process and I am speaking of my 5th and 14th Amendment, due process rights, which I'm certain will be vindicated. Upon the completion of the Appellate process. I will be most willing to answer your questions. For we have supplied you with all of the material and documents in our possession and still await your compliance with our Interrogatories, and the Demands therefor, served upon you in December of 1984.

DENALL, VITRANO
AND ASSOCIATES

Another reason that I'm not at liberty to answer your questions, at this time, is because as you are all aware, I and Attorney McLeod are objecting to the Amended and Supplemental Complaint, dated April 24th, 1985, and have sought leave to amend that Complaint, which your depositions would be focusing on, which is in a state of uncertainty due to our having consolidatedly appealed the Magistrate's Order, and the District Court's Orders, entered on January 28th, 1987 and on February 4th, 1987, wherein, the issue of amending Complaints, the Complaints will be one of the issues addressed on the appeals, due to the issue being addressed in the lower court.

More specifically, as you are all aware, I commenced this action, Pro se, on November the 24th, 1980, and I, Pro se,

amended the Complaint on December the 29th, 1980, January the 16th, 1981, and on February the 20th, 1981. Whereupon, the federal, state, and a number of other Defendants moved to dismiss the Complaints, beginning February the 5th, 1981, to and including March 26th, 1981. On March 30th, 1981, the District Court Judge, Honorable John T. Elfvin, granted me, appearing for myself, and the late Attorney, John L. Hargrave, who was apearing on behalf of the corporation, leave to amend the Complaint, in open court, directing service upon counsel by April 3rd, 1981. On April 3rd, 1981, I filed and caused counsel to be served with the "Amended and Supplemental Complaint", dated March 30th, 1981, which included a number of individuals and entities, who I alleged to have conspired

and discriminated against me, and my corporation, which deprived both, of our civil and constitutional rights to participate on the Buffalo Subway Construction Project. On April 22nd, 1981, the District court entered an Order and Judgment, without notice and without hearing, dismissing my individual claims, upon the erroneous grounds that I had no standing to pursue my claims in this case, thus precluding and terminating my participation in this case, without due process, thus divesting the Court of jurisdiction, over my person, causing a number of subsequent orders to have been entered in this case, without due process of law. The latter being entered on January the 28th, 1987 and February the 4th, 1987; both of which have been consolidatedly appealed, to the Second Circuit, under the provisions of Section 1292 (a) (1), 28 USC, upon the grounds that the

appealed Order, and all other challenged Orders, entered on and after April 22nd, 1981 are mandatorily void, as a matter of law, including the Order, compelling this proceeding, which was entered, without notice, or a hearing being afforded me; wherein, I base my position upon the following law, Crosby versus Bradstreet Company.

THE COURT: Mr. Jones, don't bother reading the citations --

WALTER L. JONES: Okay, sir.

THE COURT: -- or setting out the citations. you can attach or give copies of that statement --

WALTER L. JONES: Judge, I do have another part of the statement that don't have to do with the citations.

THE COURT: I appreciate that. I'll allow you

to read it, but we will give -- I will also ask that copies of the statement be provided to all counsel --

WALTER L. JONES: I will.

THE COURT: -- and possibly be attached as part of the deposition.

WALTER L. JONES: Yes, sir.

THE COURT: Go ahead on something other than the legal citations.

WALTER L. JONES: I got one more statement I'd like to make. This is the balance of it. I further commenced discovery Pro se. Now, I'm adding in the Pro se. It's not on the statement, but I will put it in, and type it, 'cause I was Pro se today.

THE COURT: Fine, fine.

WALTER L. JONES: By written Interrogatories, on January the 5th, 1981, thirty-nine days after the commencement of this action,

wherein the Defendants only commenced this discovery in January of this year, 1987, which are the basis for the present proceeding, on this, the 16th day of March, 1987; notwithstanding Plaintiffs' Supplemental Interrogatories, and Demands therefor remaining unanswered, and uncompiled with, for over two years, due to the maliciious and arbitrary unfairness, and due process violation that has and are continually being committed in this action by the lower courts, and the Defendants' attorneys, against my interests,and in furtherance of the conspiracy to deprive me of my individual constitutional rights to seek redress, in the U.S. District Court, as against all the conspirators, who intentionally deprived me of my individual civil and constitutional rights to have participated on the Buffalo Subway Construction Project. That's the end of it, Your Honor.

DENALL, VITRANO
AND ASSOCIATES

THE COURT: Are you making that, Mr. Jones, as an individual or as president of Jones Corporation?

WALTER L.JONES: I'm making it both as an individual and as president. I can't make it in any other capacity. I am, I am the sole stockholder of the corporation and was at the commencement of this.

THE COURT: I'm stating to you, you have a previous ruling by this Court that you, as an individual, are no longer a party to this action. I'm also stating to you, sir, that it is my understanding of the law, that even though you may have filed an appeal of some proceedings in the Second Circuit, that such, the filing of such appeal does not divest this Court or jurisdiction over those matters which relate to the question of discovery.

As I understand it, from talking to Mr. McLeod a moment ago, he concurs in my

belief as to that. Therefore, I have entered an Order that discovery continue, and that Order is still in effect. All right. I have also been advised by Mr. McLeod, or by Mr. Perlman, that Mr. McLeod has indicated to you that it is his belief that you should continue with the deposition. You are being deposed as an officer, as I understand it, of the Plaintiff corporation. You are hereby directed to respond to all questions which relate to this action, and you are to make such responses, unless you claim that there is some infringement upon the attorney-client privilege, and in all other respects, you are to answer those questions.

WALTER L. JONES: Your Honor --

THE COURT: Please.

WALTER L. JONES: Yes, sir.

THE COURT: One moment. You have previously taken the position that it is necessary for your rights as an individual Plaintiff in this action to be vindicated before you can do anything. You have been told, and you're being told again, sir, that that action has been dismissed, and that action can be subject to appeal, or that decision dismissing your individual action, can be subject to an appeal once this action is finalized.

My suggestion to you also, sir, that in your own best interests, it is advisable to you to continue with the discovery, so that the rights of the Plaintiff corporation in this action can be determined. You are no different than any other person before the Court. You will have the remedies as an individual, which any other person as an individual would have, in the same circumstances, and you can

appeal this Court's determination when there has been a final decision entered on the present case of Walter Jones Development Corporation against the NFTA, et al.

I have previously indicated to all of the parties, that because this action has been outstanding for almost seven years, that discovery should be completed. As I told you before, I am directing that you continue with the deposition. You have made your point, or you have made your statement, and all of your rights are protected in the event there is any error on my part. I'm also going to advise you, sir, if you fail to respond to those depositions, I will entertain motions for sanctions, and I -- there may have to be a recommendation made to the Court, or the parties may request, that the Court make such a sanction as a request for dismissal of the

action, because of what I construe to be your deliberate attempts to delay and frustrate the discovery in this case, and the preparation of this case, so it that can be tried. I'm also going to suggest at this time --

WALTER L. JONES: Your Honor may I say something?

THE COURT: If you decline to make those statements, or to answer any of those questions which are propounded to you, or which are material to this proceeding, that, that counsel indicate the time they have spent for the purposes of preparing for this action and for the purposes of this deposition, and also counsel can indicate the disbursements which out-of-town counsel, Mr. Biehl,has incurred in attending this deposition, so that we will have some information in the event that

there is a hearing as to the assessment of costs or as to the sanction which would be imposed.

I'm suggesting to you, Mr. Jones, that it is, it is in your best interests to continue with the discovery and continue with the lawsuit so that your corporation, which is still a Plaintiff, can have its day in Court.

WALTER L. JONES: May I respond, respectfully, Your Honor?

THE COURT: Well, there's no need for you to respond because you're going to be asked questions now, and if you fail -- if you again deliverately refuse to answer those questions, I'm assuming that counsel is going to make the appropriate motions under Rule 37 or such other rules they feel are necessary. There's no need for a response as far as I can see. If Mr. McLeod wishes

to respond on your behalf, he can.

MR. McLEOD: Not at this time, Judge, no.

THE COURT: all right. Is there anything else?

MR. PERLMAN: No, Your Honor. Thank you very much for hearing us.

THE COURT: Thank you, gentlemen.

MR. McLEOD: Could I have a few moments with Mr. Jones here?

MR. PERLMAN: Certainly.

(Discussion off the record.)

MR. McLEOD: I guess for the sake of placing it on the record, as a result of the conversation had with the Magistrate, there was a short recess, a request made for a short opportunity to speak with Mr. Jones and to discuss with him the meaning of the Magistrate's statement and possible implications that could result therefrom, as

well as positions to take and strategies to utilize, as a result of this deposition being ordered to continue on. Counsel can ask the questions of Mr. Jones, and let him place on the record his response to me, and I'm assuming it probably will be the same response to counsel.

MR. GIROUX: Ask him your first question, Mike.

RE-EXAMINATION MR. BEILEWECH:

Q. Mr. Jones, have you been involved in litigation before this case?

A. My answer is the same as I stated to the Magistrate, and it's on the record, and that is my position.

Q. You're repeating your answer to my first question?

A. I'm repeating the same answer, which is saying that you, you -- the answer has been repeated. I don't think it's necessary to

repeat it because the Magistrate -- I have stated all my, my answer to the Magistrate, other than citing the cases. He didn't allow me to finish citing the case law that I'm basing my position upon, but other than that, what I've stated to you at the beginning, which is a part of this record, and what I'm stating to the Magistrate, and what I said to you, is still my answer at this time, at this time. That means that I, as soon as the Appellate process is over, I would be more than willing to answer any and all questions pertinent to this particular lawsuit. And that answer is --

MR. RANDAZZO: Mr. Jones, Mr. Jones, with respect to the Magistrate's suggestion to you, that you provide copies of the statements to us --

THE WITNESS: Oh, yes, sir, most willingly. You all have to make the copies. I don't

have my machine here. I certainly --

MR. PERLMAN: You can make it available and I'll have it made right now.

MR. RANDAZZO: Thank you.

MR. PERLMAN: Mr. Jones, if I were to ask you questions relating to this lawsuit, and asked those questions as president of the Plaintiff corporation, would you give me the same answer that you gave Mr. Beilewech in response to his questions?

THE WITNESS: I would give the answer, as I repeated, it will be the same, based upon the same grounds.

MR. RANDAZZO: That would be the same for anybody present who asks questions?

THE WITNESS: At this time, at this time. That's not saying at a later date, I would be more than happy to answer each and every question that would be posed to me pertinent to this lawsuit.

MR. RANDAZZO: I understand. All I'm asking is, your response would be the same?

THE WITNESS: At this time, at this time. At this time, to all counsel.

MR. RANDAZZO: At this time, to all counsel, who are present?

THE WITNESS: That are present or would be present.

MR. RANDAZZO: Okay. Thank you.

MR. BEILEWECH: Mr. Jones, let me ask you this. If we meet again, if we meet again at two o'clock this afternoon, do you think you could proceed with this deposition? You understand that, Mr. Jones, the sanctions --

THE WITNESS: My answer is the same.

MR. BEILEWECH: -- this included dismissal of your Complaint, and I'm talking about the Complaint of the corporation, the sanctions he mentioned?

MR. McLEOD: I think maybe at this time, he, he wouldn't be able to answer that question. At two o'clock, as to what would happen at two o'clock, having to sit down and talk to him about it --

MR. BEILEWECH: Yes, having the opportunity to sit down and confer with you.

MR. McLEOD: -- and discuss it more fully --

MR. BEILEWECH: What could happen, the consequences?

MR. McLEOD: Yes, yes.

MR. BEILEWECH: The consequences of what he's doing could be serious.

MR. McLEOD: As a matter of fact --

MR. BEILEWECH: Would you agree to come back at two o'clock?

MR. McLEOD: I would agree to come back at two o'clock. As a matter of fact, it would perhaps give a fuller -- it would definitely give a fuller opportunity to discuss with Mr. Jones that which you just said

and that which the Magistrate has said to him, as opposed to his attempting to ingest or digest it, at this particular point in time.

MR. BEILEWECH: Precisely, precisely. Okay. Mr. Jones, will you come back at two o'clock?

MR. McLEOD: Yes.

MR. BEILEWECH: All right. Fine.

THE WITNESS: Yes, yes.

MR. BEILEWECH: Is that all right with everybody else?

MR. GAMBINO: Fine.

MR. PERLMAN: Fine. Are we adjourned?

MR. BEILEWECH: Okay. We're adjourned now.

THE WITNESS: My suggestion is this, this matter should be, should have been adjourned until after the Appellate review, which is proper.

MR. McLEOD: That's for -- I understand, well, everyone understands that, but we'll be back at two o'clock.

MR. PERLMAN: Thank you.

(Whereupon, a recess was then taken.)

MR. BEILEWECH: Mr. McLeod, may I inquire as to whether or not the Plaintiff is prepared to, as president, to proceed with the deposition?

MR. McLEOD: As you know, we took -- well, I guess maybe just a litte preface. In light of the luncheon break that we've had, and the conversation that I had with Mr. Jones, over that luncheon break, and also in light of information that was brought to Mr. Jones' attention, I was advised, and, I guess, everyone in here knew before I did about the reinstatement of one of the appeals down at the

Second Circuit, I guess effective today. Mr. Jones advises that the position that was taken this morning, relative to the answering of questions, or the non-answering of questions, I should say, would be the same this afternoon. Relative to the questions that were put to him by the attorneys, he would take the same position that he the took this morning, and he feels that the position is buttressed, to some extent, by the action of the Second Circuit, and feels that unless and until the Second Circuit acts on, if nothing else, the request for the stay --

THE WITNESS: Two, two motions.

MR. McLEOD: Well, at least, even with that portion, the deposition would -- how can I put it, he would not answer any further questions, during the course of the depositions, that counsel would put to him.

MR. BEILEWECH: You're saying the position is unchanged in regard to not only answering my questions, but each attorney that's seated here in the room, including Mr. Clack?

MR. McLEOD: Correct, at this time.

MR. BEILEWECH: At this time. Okay. Is that correct, Mr. Jones?

THE WITNESS: At this time, but we would be most willing, as soon as the Court of Appeals has a chance to make its determination, especially on the stay, well, we won't say the Court of Appeals, we'll say the Appellate Court, because we might go further.

MR. BEILEWECH: So your answer is the same?

THE WITNESS: My answer is that the position is the same as stated this morning on the record, and as stated to the Honorable Maxwell, and based upon the grounds, the

additional grounds is that we have a motion, two motions pending in the Court of Appeals for the Second Circuit, seeking a stay of discovery and all other proceedings, to motions, one of the instant appeal directly from the Order that implemented this proceeding, and from the prior Orders that were appealed prior to that particular Notice of Appeal.

MR. BEILEWECH: All right. Thats it. I have nothing further.

MR. McLEOD: I guess perhaps the only other thing that should be put on the record, although Mr. Jones is taking the position relative to answering questions, that he has made available today, I guess, the remaining documents that he was directed to produce by the Magistrate, and made them available for counsel to examine and/or make copies of them.

MR.BEILEWECH: I want to get one thing clear on this record. Mr. Jones, are you answering as president, and taking these positions as president of the Plaintiff in this action -

THE WITNESS: I'm --

MR. BEILEWECH: --Walter L. Jones Development Corporation?

THE WITNESS: I am taking the position as an individual Plaintiff in this action, who commenced the action Pro se, and whose claim was dismissed without due process of law, and based upon the position that this particular proceeding was implemented upon an Order, which was also issued without giving me a chance to be heard, on notice, and I base that, that I was not allowed due process of --

MR. BEILEWECH: What's your position, as the president of the Plaintiff, in going on with the deposition?

THE WITNESS: I've stated my positions. I have nothing further.

MR. BEILEWECH: You're refusing to proceed as president of the Plaintiff, is that correct?

THE WITNESS: I have stated my positions. Mr. Beilewech, and I have nothing further to add.

MR. McLEOD: I think perhaps the only other thing that should be added, that was discussed between myself and Mr. Jones, is that the Order that directed us to be here today was one that, although, was entered by way of stipulation between all counsel, including myself, it was based on a motion that he individually, or as a corporate officer, was never served with, and as a result of the lack of service, was not given the opportunity to be heard on it, and discuss it even with myself prior to

the stipulation being entered.

MR. PERLMAN: Mr.McLeod, has your position changed since this morning --

MR.McLEOD: My --

MR. PERLMAN: -- as an attorney? Do you condone the witness's actions?

MR. McLEOD: My position hasn't changed as the attorney, I would say.

MR. RANDAZZO: In other words, Mr. McLeod, your client, which is the Plaintiff corporation, on behalf of the Plaintiff corporation, are we to understand that the deposition will not take place or answers to questions will not take place, questions of the corporation that you represent?

MR. McLEOD: That's what I've been advised by my client, yes.

MR. PERLMAN: Let me ask one question, if I can,so we make this clear on the record.

Mr. Jones, as president of the Plaintiff corporation,would you tell me whether the corporation has ever been involved in prior litigation?

MR. McLEOD: Prior litigation period?

MR. PERLMAN: Yes, sir.

MR. McLEOD: Of any sort?

MR. PERLMAN: Any sort.

MR. McLEOD: Well, I object to that.

MR. PERLMAN: I'm asking you to answer as president of the Plaintiff corporation.

THE WITNESS: I stated my answers today, and my answers are the same.

MR. PERLMAN: Okay.

THE WITNESS: That's the same thing Mr. Beilewech asked me.

MR. PERLMAN: As in the written statement?

THE WITNESS: It's in the written statement. Mr. Beilewech has the answers.

MR. PERLMAN: Okay. Fine.

MR. BEILEWECH: I don't quite follow this business of a stipulation amoung counsel leading to --

MR. McLEOD: The stipulated Order that we entered into the other week with the Magistrate.

MR. BEILEWECH: You're saying that service ws not effective on your corporation, and, therefore, that is another ground for not proceeding with the deposition?

MR. McLEOD: That was one of the other grounds discussed between myself and Mr.Jones, just so his position, the position, as I understand it, is clearly placed on the record.

MR. BEILEWECH: I just wanted to understand what you were saying. Thank you.

MR. PERLMAN: I think we're all set. Thank you.

THE WITNESS: I certainly would -- take this off the record.

MR. PERLMAN: I think we'll be on the record, if you have anything to say to me.

THE WITNESS: Yes. We can put it on the record, Mr.Perlman.

MR. PERLMAN: Yes.

THE WITNESS: You asked the reporter last week to go into the hearing, where I wasn't present, and didn't know about it, and I guess you did go to the chambers and get Mr. McLeod out. I don't think he even had time to prepare for the hearing. As I say, it's a violation of due process, but you had the transcript done, and I obtained a copy. It cost me a hundred and four dollars. However, since there were eleven,or twelve,

or maybe seventeen attorneys, and it was going to be divided, I didn't think it would be proper or fair to have me pay a hundred and four dollars. However, I have retained my copy of it, and I would like to know all the, the other attorneys who are going to obtain copies. If they are, we should do this in a fair and equitable fashion.

MR. PERLMAN: I have no intention, on behalf of my clients to pay any portion of your bill. Is my statement here clear?

THE WITNESS: Well, that's not clear because you didn't answer my question. What I asked you was that, are you going to obtain a portion of the transcript, are you going to obtain a transcript?

MR. PERLMAN: I have a copy of it, yes.

THE WITNESS: Are you going to obtain it, Mr. Randazzo?

MR. RANDAZZO: We indicated to the reporter -- I did that. I intended to purchase a copy of the transcript. I believe I made that clear when we were present last, that --

THE WITNESS: Did you, Mr. Beilewech?

MR. BEILEWECH: I did not.

MR. GAMBINO: I did not.

MR. GIROUX: Which transcript, the transcript before Judge Maxwell?

MR. GAMBINO: The one in Court.

MS. GREGORY: The Order to Show Cause.

MR. GIROUX: I don't recall whether I did request a copy or not. Certainly if I requested one, I would be paying for it, and if I didn't request one, I wouldn't be paying for it. I don't recall, Mr. Jones.

THE WITNESS: Are you planning on getting one? You don't know?

MR. GIROUX: I can't recall whether I ordered one or not from that, on that proceeding.

THE WITNESS: What about on behalf of the NFTA, for example?

MS. GREGORY: No, we didn't order one.

THE WITNESS: Because the court reporter said the reason they were charging me that much, they made it clear, is that because, I guess, only one copy had been done, and I guess me and you divided that cost.

MR.PERLMAN: Mr. Jones, I'm not really interested in whatever your arrangements were with the court reporter. We'll pay our bills, and, I assume, you'll pay yours. I have nothing further to say.

THE WITNESS: And I have nothing further.

* * * * *

STATE OF NEW YORK)
SS:
COUNTY OF ERIE)

I, JACQUELINE M. KELLY, a Notary Public in and for the State of New York, County of Erie, DO HEREBY CERTIFY that the deposition of WALTER L. JONES was taken down by me in a verbatim manner by means of Machine Shorthand, on March 16, 1987. That the deposition was then reduced in writing under my direction. That the deposition was taken to be used in the above-entitled action. That the said deponent, before examination, was duly sworn by me to testify to the truth, the whole truth and nothing but the truth, relative to said action.

I further CERTIFY that the above-described transcript constitutes a true and accurate and complete transcript of the testimony.

Jacqueline M. Kelly

JACQUELINE M. KELLY,
Notary Public

APPENDIX MM

LETTER TO DISTRICT COURT CLERK,

AND JUDGE ELFVIN, FROM ATTORNEY

JAMES A. W. McLEOD,

DATED APRIL 6, 1987

REQUESTING THE MOTION FOR DISMISSAL

BE RECORDED AND TRANSCRIBED

JAMES A. W. McLEOD, ESQ.
P.O. BOX 1585
ELLICOTT STATION
BUFFALO, NEW YORK 14205
(716) 852-0585

April 6, 1987

Court Clerk,
United States District Court
Western District of New York
Federal Courthouse
Buffalo, New York 14202

Dear Clerk:

Re: Walter L. Jones and Walter L. Jones Development Corporation, Inc., v. Niagara Frontier Transportation authority, et al.
Civil No. 80-1075E

I am enclosing for filing, and submission to the Hon. John T. Elfvin, Plaintiffs' Memorandum of Law, in opposition to Defendants' motions to dismiss the action. Also enclosed are certificates of service.

The Plaintiffs request that the proceedings scheduled for April 13, 1987, before the Hon. John T. Elfvin, be recorded and transcribed by the court reporter.

Very truly yours,

JAMES A. W. McLEOD, ESQ.

Enclosure
Copy to: See attached distribution sheet
Hon. John T. Elfvin

APPENDIX NN

PLAINTIFFS JOINT NOTICE OF APPEAL
TO THE COURT OF APPEALS
FILED ON JUNE 15, 1987

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

WALTER L. JONES, and
WALTER L. JONES DEVELOPMENT CORPORATION, INC.,
Plaintiffs, JOINT NOTICE OF APPEAL

vs.

File No. 80-1075E

NIAGARA FRONTIER TRANSPORTATION AUTHORITY,(NFTA) ET AL,
Defendants.

NOTICE IS HEREBY GIVEN, that Walter L. Jones, Pro se, for himself, and Walter L. Jones Development Corporation, through its attorney; Plaintiffs above named, hereby jointly appeal to the United States Court of Appeals, for the Second Circuit, from the final judgement and order of the District Court Justice, Hon. John T. Elfvin, dismissing the action, as a sanction, entered on April 16, and 17, 1987, in violation of Appellant Jones' and Appellant Corporation's civil and constitutional rights to a trial upon the merits, in this civil rights case.

DATED: Buffalo, New York
June 12, 1987

WALTER L. JONES, Pro se
for himself
204 Kings Highway
Snyder, New York 14226
(716) 839-2696

JAMES A. W. McLEOD, ESQ.
Attorney for Plaintiff,
Walter L. Jones Dev.
Corp., Inc.
P.O. Box 1585
Ellicott Station
Buffalo, New York 14205
(716) 852-0585

The other parties to these cases are: Respondent Co-Plaintiff, WALTER L. JONES DEVELOPMENT CORPORATION, INC., and Respondent Defendants, NIAGARA FRONTIER TRANS PORTATION AUTHORITY, (NFTA), JAMES H. WOLFORD, GEORGE L. WESSEL, RICHARD C. SOUTHARD, JOHN F. DOWNING, WILLIAM G. GISEL, JOHN F. KOPCZYNSKI, WILLIAM H. WENDEL, JACK BAYER, CHESTER R. HARDT, CEORGE J. TRIMPER, ALFONSE V. BELLANCO, TIMOTHY J. TOOHEY, ERNESTINE R. GREEN, JACOB F. SCHOELLKOPF, V., JAMES E. KELLY, KENNETH G. KNNIGHT, WILLIAM BULOW, ROBERT D. GIOIA, RONALD J. ANTHONY, RICHARD F. GALLAGHER, THEODORE BECK, (Officials and Administra tors), URBAN MASS TRANSPORTATION ADMINISTRATION, (UMTA), HIRAM J. WALKER, BROCK ADAMS, ROBERT PARTRICELLI, JOSE CAMALLONGA, RICHARD S. PAGE, HAROLD B. WILLIAMS, WESLEY A. PLUMMER, WILHEMEMIA BURKE, ARTHUR B. TEELE, ANDREW LEWIS, (Officials and Administrators), NEW YORK STATE DEPARTMENT OF TRANSPORTATION (NY DOT), NEAL CAVANAUGH, JOSEPH DIPIRRO, SIEGFRIED CONSTRUCTION CO. INC., JOHN J. SANDERS, SLATTERY ASSOCIATES, INC., IRVING FRANCIS, GERALD MILLER, JOHN W. COWPER CO. INC., S.H. BARTHOLOMEW, FRUIN - COLNON, TOM TRAYLOR, TRAYLOR BROS., WILLIAM STER LING, ONYX CONSTRUCTION & EQUIPMENT CO., JOHN M. FUHRMANN, ROBERT M. LOGAN, CONSTRUCTION INDUSTRY EMPLOYERS' ASSOCIA TION, DONALD J. BLAIR, BUILDING TRADES COUNCIL OF BUFFALO AND VICINITY, RONALD M. FINO, LABORERS LOCAL UNION NO. 210, JOSEPH F. COLERN, MICHAEL FITZPATRICK, IRON WORKERS LOCAL UNION NO. 6, LEONARD S. CONIGLIO, CEMENT MASONS'LOCAL UNION NO. 511, HERMAN F. BODEWES, CARPENTERS DISTRICT COUNCIL, LEO HOPKINS, OPERATING ENGINEERS LOCAL UNION NO. 17, 17A, 17B, LAWRENCE J. STROH, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, PLUMBING CONTRACTORS ASSOCIATION OF ERIE COUNTY, N.Y., INC., ALBERT ELIA BUILDING COMPANY, INC., LAWRENCE A. ELIA,(Officer), S & M CONSTRUCTORS, INC., JOHN DENBESTE, ELTON T. GRANT, AFL-CIO COUNCIL, GEORGE L. WESSEL, CONSTRUCTION INDUSTRY COALITION FOR ECONOMIC RECOVERY, WESTERN NEW YORK, (Coalition), BERNARD J. SHEVLIR, DONALD J. BLAIR, MARSHALL DAVIS, MECHANICAL CONTRACTORS ASSOCIATION OF BUFFALO & VICINITY, INC., (As sociation). BOILER MAKERS' EMPLOYERS ASSOCIATION OF BUFFALO & VICINITY, LOUIS D. MADIA, (Official), GREATER BUFFALO SHEET METAL & ROOFING ASSOCIATION, PAUL GILBERT,(Official), ASBESTOS WORKERS LOCAL UNION NO. , JACK KELLEHER, (Offi cial), BOILER MAKERS LOCAL UNION NO. 7, JOHN BARRY, (Official), BRICKLAYERS LOCAL UNION NO. 45, JOHN JOSEPH MCGOVERN, ELECTRICAL WORKERS LOCAL UNION NO. 41, MELBOURNE H. RICH, (Official), ELEVATOR CONSTRUCTORS LOCAL NO. 14. VICTOR SCARAVILLI AND S & M McHUGH KENNY, OSCAR RAYFORD.

AND UNIVERSAL EQUIPMENT & CONSTRUCTION CO., EDWARD COLE AND TRESCO DISTRIBUTING, CARMEN A GALLO, AND AMIGA CONSTRUCTION, EMAMUEL HUMES AND HUMES INDUSTRIAL ELECTRICAL, AND HUMES CONTRACTING CO., JOSEPH MYLES AND TRASHLAND TRUCKING, ROBERT CHESTER AND KEYSTONE STEEL, ROBERT L. PITTS AND P & S SUPPLY, JAMES LYLE AND L & W CONCRETE, DEVILIUS GRAY AND AFTCO INTERNATIONAL TRADING CO., PAUL HARRISON AND DOWNTOWN DUMP TRUCK SERVICE, DEAN WILLIAMS AND NATIVE AMERICAN CONSTRUCTION COMPANY, WILLIAM TABORN AND NELSON, PETERS, ASSOCIATES.

Supreme Court, U.S.
FILED
SEP 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

(2)

NO. 87-2041

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

WALTER L. JONES, PRO SE,
PETITIONER

V.

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL.
RESPONDENTS

PETITIONER'S APPLICATION FOR A SUMMARY DISPOSITION ON THE MERITS, SUMMARY REVERSAL, AND PERMISSION TO AMEND COMPLAINT AND MERGE CLAIMS; AWARDING DOUBLE COSTS AND PERMISSION TO PROCEED PRO SE BEFORE ANOTHER JUDGE, PURSUANT TO THIS COURT'S RULES 23.1., 42.1., 50.2., 3., 5., 6., 7., AND PURSUANT TO TITLE 28, USC § 455(a), 1653 AND 1654.

WALTER L. JONES, Pro se
for himself
167 Roebling Avenue
Buffalo, New York 14215
(716) 894-4508

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NO. 87 - 2041

IN THE SUPREME COURT OF THE UNITED STATES

WALTER L. JONES, PRO SE

Petitioner,

vs.

APPLICATION
FOR
MULTIPLE RELIEFS

NIAGARA FRONTIER TRANSPORTATION AUTHORITY, ET AL,

Respondents.

APPLICATION IS HEREBY MADE by the Petitioner, to the United States Supreme Court, for a summary disposition on the merits, and summary reversal, reinstating Petitioner's individual standings, and granting the Petitioner Pro se, permission to file an Amended and Supplemental Complaint, and to merge his wholly owned Corporation's claims, with his individual claims, before another judge, awarding Petitioner, double costs, pursuant to this Court's Rules 23.1, 42.1, 50.2, .3, .5, .6, .7, and pursuant to Title 28 USC, Sections 455(a) 1653, and 1654.

REASONS FOR GRANTING RELIEF

This case has nationwide implications, with regards to a non-lawyer, aggrieved "Black, Pro se" (natural person) litigant, being deprived of his constitutional and statutory rights to protect, and vindicate the denial of his constitutional rights, statutory entitlements, and property interests, who, because of racial discrimination, and economical deprivations, does not possess the social, nor financial status to obtain and/or hire conflict-of -interest-free, qualified, responsible, responsive counsel to represent his interests, fully, before the federal court system, because of the affluent Respondents' dominating influences, and social status' within the community.

The Respondent, United States Government waived its right to file a response, in opposition to the Petition for Writ of Certiorari in this case by "waiver", dated July 12, 1988, "unless requested to do so by this Court". Likewise, the remainder of the Respondents waived their right to file responses, in opposition

to the Petition for Writ of Certiorari, in this case, because of their inability to controvert, and face the issues presented in the Petition, now before this Court.

Respondents therefore have failed entirely to present any controvert, or argument to rebut the claims, and arguments presented by the Petitioner, pertaining to the issues now before this Court, supported by the Appendix, (RECORD BELOW).

Since this case never reached the merits, and in light of the Respondent's inability to face the issues presented in the Petition, and this case having nationwide implications, the need for plenary review of this action is now therefore indisputable.

The Petitioner respectfully suggests that summary reversal is now in order, and "manditory", with respect to the decisions, judgements, and mandates rendered, and entered below, since, and including April 17, 1981, and supervision, by this Court, is now therefore fundamental to the future conduct of this case below.

Indeed, to allow the decisions below to stand, under the circumstances of this case, is effectively, to unconstitutionally exclude the Petitioner, and his MBE firm, from the court, without due process, without equal protection, and denial of representation.

The attorney who was most recently representing the Petitioner's "wholly owned" Corporation, below, is not authorized to practice before this Court, and made no attempt, or effort to qualify himself, in order to appear before this Court, on behalf of the Petitioner's Corporation, in disregard to the Petitioner's request; all in furtherance of the attorneys' conflict-of-interest issues raised in the Petition, now before this Court.

SUMMARY OF RELEVANT FACTS

Beginning in 1978, the Petitioner, as a beneficiary of the ACTS, under Title VI, made numerous individual, documented efforts, through his wholly owned (non-union) MBE general construction firm, (WALTER L. JONES DEVELOPMENT CORPORATION, INC.) to participate in the main stream of the construction activities, on the federally

funded Buffalo Subway Construction Project, and to personally benefit from his and his MBE firm's participation thereon, in accordance to Agreements, Contracts, and statutory and regulatory provisions, under the Civil Rights, and Urban Mass Transportation "ACTS" of 1964.

The Petitioner sought to participate by the methods of estimating, preparing, and submitting seven (7) sealed bids, and written requests for assistance, to the federal Grant Recipient, N.F.T.A.'s officials, and administrators, on behalf of his wholly owned non-union, MBE corporate firm; being the low bidder on three (3) separate occasions, before the commencement of this law suit, totalling $47,870,186.36, and once thereafter; for a grand total of $56,602,478.00.

The Petitioner further, after being denied the low bid contracts, sought to participate on the Project, through his non-union MBE firm, in accordance to the Agreements, Contracts, and statutory, and regulatory provisions under the "ACTS", by the additional method of estimating, preparing, and submitting eight (8) addi-

tional, written sub and/or joint venture contract/proposals, to White owned, participating, unionized construction firms' officers and administrators, totalling $39,015,464.00. However, all efforts made by the Petitioner were intentionally, and purposefully rejected, with malice, through a conspiracy, because of the Petitioner's race, and his firm's non-union general contracting status, which deprived Petitioner of the benefits of his, and his MBE firm's statutory entitlements, under the "ACTS".

In order to seek judicial relief, the Petitioner commenced this action, Pro se, on November 24, 1980. (See Appendix E, page 80a, bound to the Petition). On March 30, 1981, an attorney, John L. Hargrave, Sr., who is now deceased, appeared, in open court, on behalf of the "Corporation", and joined the Petitioner's motion for leave to amend the Complaint, which was granted, from the bench, by the Court, directing service by April 3, 1981. (See Appendix E, page 83a, bound to the Petition).

In accordance to the Court's March 30,

1981 directive, the Petitioner, and the now deceased attorney, representing his MBE corporate firm, filed, and served a jointly signed, amended complaint, on April 3, 1981, entitled "AMENDED AND SUPPLEMENTAL COMPLAINT". (See Appendix E, page 83a, bound to the Petition). (See also Appendix F and G, pages 95a-168a, bound to the Petition). THIS COMPLAINT MADE MOOT, ALL PRIOR COMPLAINTS, FILED BEFORE APRIL 3, 1981.

On April 17, 1981, without any motions being filed and/or served to dismiss the "AMENDED AND SUPPLEMENTAL COMPLAINT", the District Court, sua sponte "WITHOUT NOTICE" and "WITHOUT HEARING", dismissed the Petitioner's individual claims, as alleged in the "AMENDED AND SUPPLEMENTAL COMPLAINT", and/or disregarded those claims, as filed on April 3, 1981, upon the grounds that Petitioner lacked standings to pursue his individual claims, [mootly] directing the Petitioner to hire an attorney to represent his wholly owned MBE corporate firm, in this case. (See Appendix D, pages 25a-31a, and 36a-37a, bound to the Petition).

Due to a dispute arising between the Petitioner and the now deceased attorney, (John L. Hargrave, Sr.) who was representing his wholly owned MBE corporate firm, and pursuant to the District Court's additional directive of May 26, 1981, Petitioner hired attorney, CHARLES L. DAVIS, (ATTORNEY DAVIS), on June 15, 1981, who, through fraud, deceit, conflict-of-interest, and in furtherance of the conspiracy, deleted and dropped twenty two (22) individuals, and twenty three (23) entities, and deleted the conspiracy allegations, and ad damnum clause, by deceitfully amending the complaint, without the Petitioner's initial knowledge, and over the Petitioner's prior, oral and written objections expressly made to the Court, and to ATTORNEY DAVIS, as is set forth on pages 17-21 in the Petition, and as supported by Appendix H-T, pages 169a-230a, bound to the Petition. See also Appendix G, pages 96a-168a, bound to the Petition.

Soon thereafter, the District Court sue sponte, entered an additional order, without

Petitioner's initial knowledge, directing ATTORNEY DAVIS, to show cause, why the parties, and entities, (deleted by him) should not be dropped from the action, and the claims dismissed, as to each of them. No appearance was made, by ATTORNEY DAVIS, in furtherance of the conflict-of-interest conspiracy, and the District Court dropped the Defendants, and dismissed the action, as to each of them,"WITH PREJUDICE, AND WITHOUT LEAVE TO FURTHER AMEND,"as to those parties. (See Appendix U-X, pages 231-241, bound to the Petition).

The aforementioned decisions, and acts by ATTORNEY DAVIS, deprived the individual Petitioner and his MBE firm of their substantive constitutional rights to due process, equal protection, and of his property interests, (protected by the Fifth and Fourteenth Constitutional Amendments) in this law suit, and are manditorily void, as a matter of law, VTA INC., VS. AIRCO, ET AL, 597 F 2d 220 (10th Cir. 1979).

Based upon the aforementioned, unconstitutional, SUA SPONTE decisions, and other uncon-

stitutional decisions, and the conflict-of-interest, acts committed by ATTORNEY DAVIS, and based upon a SINE DIE NOTICE, (Staying) all pending matters, being in effect, pending an appeal to the Court of Appeals, the individual Petitioner, as the sole stockholder, and operator of his Corporation, declined to answer questions at an oral deposition proceeding, on March 16, 1987. (See Appendix LL, pages 314a-377a, bound to the Petition).

However, the district Court, on April 15, 1987 abused its discretion, and arbitrarily dismissed this case, as a sanction, pursuant to Rule 37 of the Federal Rules of Civil Procedure, concluding that the Petitioner was trying to "coerce" the court into reinstating him as a party plaintiff. (See Appendix B, pages 17a-22a, bound to the Petition). The Court of Appeals departed from the accepted and usual course, and affirmed the District Court's decisions, on December 31, 1987, and denied a Petition for Re-hearing, on January 29, 1988. (See Appendix A and C, pages 1a-23a, bound to the

Petition).

It should now be pointed out, that after ATTORNEY DAVIS withdrew from representing the Corporation in this case, the Petitioner Pro se, sought to reinstate the dropped parties, by amending the complaint, and joining parties, through assignment of the Corporation's claims, to himself, in October of 1982, which was denied by the District Court, on December 6, 1982, and affirmed by the Court of Appeals, on November 23, 1983, cited at 722 F 2d 20 (2nd Cir. 1983). (See Appendix C, page 18a, annexed hereto).

Petitioner, Pro se sought also, to amend the complaint, and join parties, in the Court of Appeals, in 1987, which was denied, as moot, on December 31, 1987. (See Appendix A, page 15a, bound with the Petition). See also the instant (proposed) amended complaint, annexed hereto, as App. D, page 31a.

The District Court judge, on October 11, 1985 further denied the Petitioner's Pro se motion for his disqualification, brought under 28 USC § 455 A and B(1), and the Court of

Appeals denied the Petitioner's motion for Writ of Mandamus, regarding the issue, on the 23rd day of January, 1986. See Appendix D, pages 55a-58a). (See also Appendix Z, page 251a).

The Petitioner acknowledges harmless errors in the Petition, and makes correction, by references; under "Table of Cases", on page V, Anderson National Bank v. Luckett, page no. "223", is corrected to "233"' on page VII, Klappott v. United States, volume no. "350", is corrected to "335"; and on page 54, Klappott v. United States, volume no "350", is corrected to "335"; under "Constitutional Statutes and Regulations", on page X, "42 USC § 1341", is corrected to "28 USC § 1343", and "42 USC § 1331", is corrected to "28 USC 1331".

ARGUMENT

The United States District Court, for the District of Maryland, Hon. Shirley B. Jones, in deciding, HOWARD SECURITY SERVICES, INC. V. JOHNS HOPKINS HOSPITAL, 516 F Supp. 508, 513, (1981) held that: a close corporation, wholly owned and operated, by its Black president, who

was allegedly denied the award of a contract, because of its president's race; to deal with the Corporation is, practically speaking, to deal with the individual, where the individual also asserted a personal claim, under § 1981. "THE INDIVIDUAL AND PERSONAL CLAIMS MAY WELL EFFECTUALLY MERGE", 516 F Supp at 513 (1981), footnote 12.

in this case, the circumstances are identical to those in HOWARD, in that the Petitioner alleged that he was harmed, and damaged, personally by the actions of the Defendants, whose actions were directed at PLAINTIFF, WALTER L. JONES, personally, and his Corporaiton, for his action, and efforts to introduce his, and other non-union, minority construction firms to the Authority, (N.F.T.A.), with the intent of acquiring contracts on the local "Light Rail Rapid Transit Construction Project". (See Appendix G, pages 100a-104a, bound to the Petition). HOWARD SECURITY SERVICE, INC., V. JOHNS HOPKINS HOSPITAL, 516 F Supp. 508, 513, (1981).

Moreover, Petitioner and his wholly own-

ed Corporation "MERGED", and alleged their claims in the "AMENDED AND SUPPLEMENTAL COMPLAINT", and requested joint relief, in the ad damnum clause, before ATTORNEY DAVIS made his fraudulent amendments. (See appendix G, pages 101a-168a), HOWARD SECURITY SERVICES, INC., V. JOHNS HOPKINS HOSPITAL., 516 F Supp. 508. 513 (1981). (Now see Appendix P, and R, pages 186a-201a, and pages 214a-228a).

The Petitioner, and his wholly owned Corporation's claims were alleged under Title VI of the Civil Rights Act of 1964, and under the Urban Mass Transportation Act of 1964, citing as jurisdiction, Title 28 USC, Sections 1331, 1343.... (See Appendix G, pages 101a-104a, bound to the Petition). Given the limited basis for the District Court finding that the Corporation had a cause of action, in this case, the Petitioner's individual claims would also suffice, and "the individual and the corporate claims may well effectively merge", 516 F Supp. at 513, footnote 12.

Due to the Petitioner's having commenced

this law suit Pro se, and having encountered the difficulties, as set forth herein, the Petitioner should be permitted to merge his wholly owned Corporation's civil rights claims, with his individual civil rights claims, upon reversal, and proceed Pro se, to the merits. "HOWARD", 516 F Supp. 508, 513 (1981); HAINES V. KERNER, 404, US 519 (1971); O'RILLEY V. NEW YORK TIMES; 692 F 2d 863 (2nd Cir. 1982).

The Petitioner, after being denied oral argument, on September 16, 1985, presented argument to the District Court, citing "HOWARD"; 516 F Supp. 508, 513 (1981), in a letter, dated September 18, 1985, as authority for the District Court's reconsideration of the standings issue. (See Appendix A, pages 1a-6a, annexed hereto) (See also Appendix D, pages 59a-79a, bound to the Petition)

The Petitioner further, on appeal, presented argument to the Court of Appeals, citing "HOWARD"; 516 F Supp. 508, 513 (1981), in his Brief, dated December 10, 1985, as authority, with respect to his individual constitutional

standings. The appeal was dismissed for lack of finality. (See Appendix B, pages 7a - 16a, annexed hereto) (See also Appendix Z, pages 250a-251a, bound to the Petition).

The Petitioner respectfully submits that, to allow the decisions below, to stand, under the circumstances of this case, is effectively to unconstitutionally exclude the Petitioner, and his MBE firm, from the court, without due process, without equal protection, and denial of representation, upon "MANDITORY" - VOIDABLE, reversible decisions; VTA INC., V. AIRCO, ET AL: 597 F 2d 220 (10th Cir. 1979). KLAPPOTT V. UNITED STATES: 335 US 602 (1949); JOHNSON V. ZERBST: 304 US 458 (1938); ANDERSON NATIONAL BANK V. LUCKETT: 321 US 233, 246 (1944); ARMSTRONG V. MANZO; 380 US 545, 552 (1960). See also MATTER OF HOLLOWAY TAX SERVICE INC, 417 F Supp. 182 (E D NY 1976).

The District Court's decision to dismiss this case, as a sanction, pursuant to Rule 37, of the Federal Rules of Civil Procedures, is in direct conflict with this Court's holding,

in SOCIETE INTERNATIONAL V. ROGER, 387 US 197, 198-213 (1958); which held that, on the Record, dismissal of the complaint, with prejudice, was not justified. The Petitioner respectfully suggests that, upon the Record, in this case, dismissal, as a sanction, was not justified, in view of the constitutional questions, in which the issues focus on. SOCIETE INTERNATIONAL V. ROGER; 387 US 198-213 (1958); See also WHELLING V. COLUMBIA BROADCASTING SYSTEM: 603 F 2d 1084 (8th Cir. 1979); SALAHUDDIN V. HARRIS; 782 F 2d 1127 (2nd Cir. 1986); C.F. IN RE MAERTIN - TRAGONA; 763 F 2d 140 (2nd Cir. 1985).

Due to the Petitioner, Pro se, being precluded from self representation, in this case, due to a denial of his statutory, and constitutional rights, since April, 1981; the Petitioner's individual constitutional standings should be reinstated, granting him permission to amend the Complaint, and to join parties, in the Court below, upon reversal, pursuant to 28 USC § 1653 and 1654. HAINES V. KERNER; 404 US 519 (1971); CANNON V. UNIVERSITY OF CHICAGO: 401 US 677

(1979); MOORE V. COAT COMPANY: 270 F 2d 410 (3rd Cir. 1959); COX V. LIVINGSTON: 407 F 2d 392 (2nd Cir. 1969); ROTOLO V. BROUGH; 532 F 2d 920 (3rd Cir. 1976).

The Court of Appeals held, in "ROTOLO", that a "civil rights' suit was appropriate for application of statute which expressly allows amendment of defects to jurisdiction allegations"...., and that "Plaintiff was entitled to amend civil rights complaint, which was insufficient, due to vague and conclusory allegations", 532 F 2d 920 (3rd Cir. 1976). The Court of Appeals held, in "MOORE", that "where the Plaintiff appeared Pro se, and was unskilled in law, the court must view his pleadings, and the applicable procedures liberally". 270 F 2d 410 (3rd Cir. 1959).

Furthermore, the Court of Appeals held in "COX", that "Section 1653 of the Judicial Code 28 USC, § 1653 (1964), expressly provides that (d)efective allegations of jurisdiction may be amended, upon terms in the trial or Appellate Courts", 407 F 2d 392 (2nd Cir. 1969).

In CHURCH OF SCIENTOLOGY OF CAL. V. COPPER; 495 F Supp. 455 (1980), the court held that: "Recusal was appropriate where trial judge's impartiality might be questionable" ..... and that the court has no power or authority to contest, in any way, the validity of recusal allegation , citing BURGER V. UNITED STATES; 255 US 22, 33, (1921); E G MIMS V. SHAPP; 541 F 2d 415, 417 (3rd Cir. 1976); HODGSON V. LIQUOR SALESMENS' UNION; 444 F 2d 1344, 1348 (2nd Cir. 1971) 28 USCA 144; 455a.

The court held, in WEBBE V. McGHIE, ET AL; 549 F 2d 1358, 1361, that: "the appearance of impartiality is virtually as important as the fact of impartiality", and where the trial judge had announced that the party was "stuck", and granted his opposition, summary judgement, the court reversed, and concluded that there was no reasonable likelihood that the judge, having been reversed, could later preside over the trial, in a fair and impartial manner, and thus directed all further proceedings be conducted by another judge. 549 F 2d at 1361 (1977)

In this case, the District Court judge concluded, upon his dismissing this case, as a sanction, that the Petitioner was trying to "coerce" the court into reinstating him, as a party. WEBBE V. McGHIE, ET AL; 549 F 2d at 1361 (1977).

RELIEF REQUESTED

The Petitioner most respectfully asks this Honorable Court to exercise its authority, and protect his individual constitutional, and statutory rights, in this case, and render a summary disposition, upon the merits, directing summary reversal, voiding all decisions, judgements, and mandates, entered below, since and including April 17, 1981, permitting him, Pro se, to merge his wholly owned Corporation's claims, with his individual claims, directing that he be allowed to amend the complaint, and to join parties, with double costs, and directing this case be transfered before another Judge, for further proceedings, pursuant to 28 USC, Sections 455(a), 1653, 1654, and pursuant to this Court's Rules 23.1, 42.1, 50.2, .3, .5, .6, .7, and/or grant Writ of Certiorari.

DATED: Buffalo, New York
September 6, 1988

WALTER L. JONES, Pro se
167 Roebling Avenue
Buffalo, New York 14215
(716) 894-4508

APPENDIX A

PETITIONER'S LETTER TO JUDGE ELFVIN

DATED SEPTEMBER 18, 1985, CITING

HOWARD SECURITY SERVICE, INC., V. JOHNS

HOPKINS HOSPITAL

WALTER L. JONES
204 Kings Highway
Snyder, New York 14226

September 18, 1985

Hon. John T. Elfvin,
U.S. Dsitrict Court
Western District of New York
U.S. Courthouse
68 Court Street
Buffalo, New York 14202

HAND DELIVERED

Re: Walter L. Jones vs. N.F.T.A., et al
Civ. No. 80-1075E

Dear Judge Elfvin:

This letter is to confirm that I appeared, Pro se in court on September 16, 1985 and signed the sign - in sheet that all of the attorneys signed, on my individual motion and supplemental motion, as scheduled by the court's scheduling orders, dated August 8, 1985, and August 20, 1985.

This is to further confirm that you stated that you would not hear my Pro se motions, due to your having dismissed my individual causes of action from this multi - party and multi claim "civil rights action", upon the grounds that I had no standings of which my motions sought reconsideration of, as well as other reliefs, conclusive of the court's denying my my individual right to "due process" by refusing

to grant me a review of its determinations,

Due to my being precluded from arguing my individual motion and supplemental motion, I am therefore compelled to write this letter and attempt to respond to several of the issues that were raised on September 16, 1985, at the scheduled proceeding.

In accordance to Title VI of the Civil Rights Act of 1964, I am the "person", and beneficiary of the statute, due to my individual racial origin, American citizenship, and my being the owner of my MBE firm.

I was denied, through conspiracy, class and racial discrimination; my "individual civil rights", to participate on the Buffalo Subway Construction Project, which rights were extended under Title VI of the Civil Rights Act of 1964; from which I, Pro se, commenced this multi-party, and multi-claim civil rights action, to redress and recover damages, and punitive damages against the Defendants, for their intentional and malicious discriminatory acts against me.

This court, however, has determined that I have no standing to sue in this "civil rights", multi-party and multi-claim action, of which I am respectfully in a supported difference of opinion, and was attempting to be heard, by formal motion, on September 16, 1985.

Rule 54(B) of the Federal Rules of Civil Procedure provides and authorizes that, "when more than one claim for relief is presented

in an action, whether as a claim, counter claim, cross claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgement, as to one or more, but fewer than all of the claims, or parties, only upon a express determination, that there is no just reason for delay, and upon an express direction for the entry of judgement." "In the absence of such determination and direction, any order, or other form of decision, however designated, which adjudicates fewer than all the claims, shall not terminate the action, as to any of the claims or parties, and the order, or other form of decision is subject to revision, at any time, before the entry of judgement adjudicating all the claims, and the rights and liabilities of all the parties."

Rule 19(A) of the Federal Rules of Civil Procedure provides and authorizes that "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject mater of the action, shall be joined as a party in the action, it (1) in his absence, complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action, and is so situated, that the disposition of the action, in his absence may (i) as a practical matter, impair or impede his ability to protect that interest, or (ii) leave any

of the persons, already parties, subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations, by reasons of his claimed interest. If he has not been so joinedd, the court shall order that he be made a party. If he should join as a plaintiff, but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue, and his joinder would render the venue of the action improper, he shall be dismissed from this action.

Rule 56(A) of the federal Rules of Civil Procedure provides and authorizes that, "A party seeking to obtain a claim, counter claim, or cross claim, or to obtain a declaratory judgement, may, at any time after the expiration of (20) days from the commencement of the action, or after service of a motion for summary judgement by the adverse party, move, with or without supporting affidavits for summary judgement, in his favor, upon all or any part therof.

Section 1654 of 28 USC provides and authorizes, that, "in all courts of the United States, the parties may plead and conduct their own cases, personally, or by counsel, as by the rules of such courts, respectively, are permitted to manage and conduct causes, therein.

I, Pro se, pursuant to the above statute, rules, and provisions, prepared and filed the

subject motion and supplemental motion, to protect my individual rights, due to a number of the Defendants' attorneys' moving for certain reliefs, such as summary judgements, dismissals, and protective orders, upon the grounds that my individual claims were dismissed from this multi -party and multi - claim civil rights action, and upon the grounds that this action was barred by doctrine of res judicata, and upon the grounds that the order issued by you, was upon the merits, wherein you dropped the union defendants from this action, with prejudice, and without leave to further amend, for one default, committed by attorney Charles L. Davis, against my individual interest, and in violation of my individual "civil rights" to due process."

I am therefore, respectfully advising this court, that I am relying upon the pleadings and attachments, filed by me, as well as all of the pleadings and attachments that are referred to therein in this multi - party and multi - claim "civil rights" action, until such time, as I am allowed to be formally heard. I am herewith enclosing copies of the following cases: (1) Howard Sec. Serv. v. Johns Hopkins Hospital; (2) Minority Emp. er al vs. Tenn. dept. of Emply Sec.; and (3) Black Brothers Combined, etc., vs. City of Richmond; all of which, I gave copies to all opposing attorneys.

I, further reserve the right to correct any mis-statement of calculation error that might exist in my pleadings and prior arguments, including any arguments or pleadings made by attorney Barbara M. Sims, on my individual behalf, upon my acquiring the transcript of the proceedings held on November 19, 1984, April 1, 1985, April 29, 1985 and September 16, 1985, and upon completing the proofing, thereof.

Very truly yours,

WALTER L. JONES

WLJ:pj
Enc.
cc: See attached
Distribution List

APPENDIX B

POINT II OF PETITIONER BRIEF SUBMITTED TO THE COURT OF APPEALS IN 1985, CITING HOWARD SECURITY SERVICE INC., V. JOHNS HOPKINS HOSPITAL

UNITED STATES - COURT OF APPEALS
FOR THE SECOND CIRCUIT
DOCKET NOS.
85-7386 and 85-7194

WALTER L. JONES,
PRO SE

Plaintiff-Appellant,

-against-

NIAGARA FRONTIER TRANSPORTATION
AUTHORITY, ET AL,

Defendants-Appellees,

-and-

WALTER L. JONES, INDIVIDUALLY,
PRO SE,

Plaintiff-Appellant,

-against-

SIEGFRIED CONSTRUCTION CO.,
INC., ET AL,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF FOR PLAINTIFF-APPELLANT

POINT II

THE DISTRICT COURT ABUSED ITS DISCRETION ON OCTOBER 15, 1985, BY VACATING ITS PRIOR DETERMINATION TO CERTIFY THE INTERLOCUTORY ORDERS OF APRIL 17, 1981, AND OF FEBRUARY 12, 1985, DISMISSING THE APPELLANT'S INDIVIDUAL "CIVIL RIGHTS" CLAIMS, AND THEN GRANTING THE DEFENDANTS SUMMARY JUDGEMENT, DISMISSING THE PLAINTIFF'S INDIVIDUAL CLAIMS, UPON THE PREMISE OF ITS INTERLOCUTORY ORDERS, ISSUED ON APRIL 17, 1981, AND FEBRUARY 12, 1985. THE ORDER, GRANTING SUMMARY JUDGEMENT, SHOULD BE REVISED AND THE ORDERS VACATED, AND SET ASIDE.

Since the status of a minority business enterprise (MBE) depends upon the racial origin of the individual person(s), under federal regulations, stemming from Title VI, the individual person has standing to sue for alleged deprivation of such MBEs rights to participate on federally funded Projects, where he was directly affected and injured, by such acts, as herein.

It is a well settled rule, that standings to sue is related only to whether the dispute sought to be adjudicated will be presented in an adversary context, and in a form historically viewed as capable of judicial resolution. The United States Supreme Court amplified this rule most succintly, in Flast cs. Cohen, 392, US

43 (1968), 20 L Ed. 2d 497, reversed and remanded, 90 S Ct. 829, Association of Data Processing Service Inc., vs. William B. Camp, 409 US 205 (1972). and Trafficante vs. Metropolitan LIfe Insurance Co., 93 S Ct. 364 (1972). In the Flast decision, (supra), the United States Supreme Court, wrote:

> "In terms of Article III Limitations of Federal Court jurisdiction, the question of standing is related only to whether the dispute sought to be adjudicated, will be presented in an adversary context and in a form historically viewed as capable of judicial review,"

The practical application of this principal was subsequently recited by the U.S. Supreme Court, again in Association of Data Processing Services Organization, Inc., vs. William B. Camp, 90 S Ct. 827 (1970), wherein Supreme Court, Mr. Justice Douglas held that the Plaintiff, as a competitor of national banks, which was engaging in data processing services, was an "aggrieved" "person", under the Administrative Procedure Act, with standing to sue, stating:

> "Questions of standing, unlike "legal interest" tests concerns apart from "case"

or "controversy" tests, questions whether interest sought to be protected by Complainant is arguably within zone od interest to be protected or regulated by statute or constitutional guarantee in question." 90 S. C. 827, (1970).

The facts in the present case, civ. no. 80-1075E, far out-weigh those in Association and Flast, regarding the Plaintiff-Appellant's individually being an "aggrieved" "person", who is protected by federal statute, from which it should have been clear that the Plaintiff, individually; first and foremost, had standings in this "Civil Rights" action, for alleged racial discrimination and deprivation of individual "civil rights", guaranteed under Title VI.

In Guidry vs. Roberts, 331 S O 2d 44 (1976), the U.S. Court of appeals of Lousianna, for the First Circuit reversing and remanding that action, ruled that "standing" is a concept utilized in determining if a party is sufficiently effected, so that a justifiable controversy is present to the Court; the requirement of "standing is present, if it can besaid that the Plaintiff has a "legally protectable and tangible interest at stake in the litigation." LSA - CCP Art 1872.

This is the exact circumstances, now before this Court, where the Appellant was sufficiently effected, and has a legal, protectable,

tangible interest at stake in the civil rights action, 80-1075E, under Title VI.

It is well settled law, that Title VI of the Civil Rights Act of 1964 granted a private remedy to individual persons, who are memebers of the class for whose special benefits, said statute was enacted.

> "Several persona alleging racial discrimination across-the board in the construction industry had standing to sue several contractors and sub-contractors, even though they had never made direct applications for work, with them" Bird vs. Electrical Workers Local 24, 7 EPD 7472 (1974); Jenkins vs. United Gas Corp.; Carr vs. Conoco Plastics, Inc., (2 EPD 10 162) 423 F 2d 57, (5th Cir. 1969); United Transport Union vs. Penn Central; 443 F 2d 131 (6th Cir. 1971); Brown vs. Gatson County Dyeing Machine; 409 US 982 (1972).

The above cited cases are Title VI actions, which have a binding relationship to a title VI action, in that both Title VII and Title VI were enacted to protect individual citizens and/or persons, as herein.

The Supreme Court, on Certiorari, reversed and remanded the causes, where the District Court of the Northern district of Illinois had dismssed the Complaint, concluding that no

private remedy could be inferred under Title IX, because of the statute did not expresslyly authorize a private right of action for a person injured by a violation of the statute, which was affirmed by the United States Court of Appeals, for the Second Circuit. Cannon vs. University of Chicago, et al; 599 F 2d 1063.

The Plaintiff, in the case of Cannon vs. University of Chicago appealed on Certiorari to the U.S. Supreme Court, from the Court of Appeals - Seventh Circuit affirmation, 441 US 677, (1979).

The Supreme Court held, in Cannon, "It is not necessary to show an intention to create a private cause of action, in those situations where it is clear that federal law granted a class of persons, certain rights."

> "A private right of action for the enforcement of Civil Rights, may be implied from a federal statute not expressly providing for a private remedy, even when Congress has spoken in declarative terms."

The Supreme Court went on and further wrote, in CAnnon, that:

> "Title IX was patterned after Title VI of the Civil Rights Act of 1964, and the

drafters of Title IX especially assumed that it would be interpreted and enforced in the same manner as Title VI, which has already been construed by Federal Courts, as creating a private remedy, when title IX was enacted."

See also Santa Clara vs. Martinez; 436, US at 79, 56 L Ed 2d 106, 98, S Ct. 1670; Bossier Parish School Board vs. Lemon; 370, F 2d 847, 388 US 911, 18 L Ed. 2d 1350, 87 C Ct. 2116 (1967).

The Federal Courts have explicitly relied on Title VI as a basis for a cause of action on the part of a private victim of discrimination against the alleged discriminators. A distinguished panel of the Court of Appeals, for the Fifth Circuit, squarely decided this issue in the case of Bossier vs. Lemon; 388, US 911.

It was held by the United States Court of Appeals for the Seventh Circuit, that private citizens / taxpayers had standings to sue the federal agency in the case of Phyllis Schafly, et al vs. John A. Volpe - Secretary of Transportation, et al, 7 EPD 7379 (1974).

The Court of appeals for the Seventh Circuit, in the case of Shafley, wrote:

"Private citizens - residents in a state where federal funds for highway construction were frozen by the federal government, after a finding that equal employment opportunity goals had not been maet, had standing to sue the federal agency and the federal agency could not assert the defense of sovereign immunity", Phyllis Schafly, et al vs. John A. Volpe, Secretary of Transportation, 7 EPD 7379 (1974).

"Title VI permits any aggrieved party to sue and the private citizens were aggrieved, in that their tax dollars destined for highway construction, were frozen, and they were deprived of improved highways."

Clearly the Plaintiff-Appellant is the aggrieved party and has standings to sue the Defendants in this "Civil Rights" law suit, for their alleged intentional, racial discrimnation and deprivation of his individual civil rights to participate in th federally funded Buffalo Subway Construction Project, as the chief administrator and coordinator of his minority business enterprise (MBE) construction firm.

Moreover, the U.S. Supreme Court has consistently held that Title VI was enacted for the special benefits of particular classes of "persons" who the Plaintiff is a member of and the Courts, including the Supreme Court, has

unanimously concluded or assumed that a private action may be maintained under Title VI, which authorizes a private remedy for a "person", against whom discrimnation has been perpetuated, as herein. University of Calfornia Regent vs. Bakkee, 438, US 265 (1973), Lau vs. Nichols, 414 US 563 (1974); Bossier Parish Scholle Board bs. Lemon, 388 US 911, Uzzell vs. Friday, 547 F 2d 801 (1977), 558 F 2d 727, Serna vs. Portales, 499 F 2d 1147 (1974), Chambers vs. Omaha Public School District, 536 F 2d 223, 225 (1976).

> "Congress has repeatedly enacted legislation predicated on the assumption that Title VI may be enforced in a private action". "The conclusion that an individual may maintain a private cause of action is amply supported in the legislative history of Title VI it self." University of California Regent vs. Bakkee.

There exists most recent authority on Point, in support of the Plaintiff's position, with respect to his individual standing in the herein actions, pursuant to his being the sole stock-holder of his Corporation, where a Plaintiff stockholder alleges that the Defendants failed to award security contracts, due to his

race, Howard Security Service, Inc., et al vs. Johns Hopkins Hospital, 516 F Supp. 508 (1981).

The District Court for the District of Maryland, held in Howard, that:

> "Federal rules do not require that a complaint be very detailed, only that sufficient facts be stated to give notice of claim and such rule included discrimination complaints." 42 USC A §§ 1981 - 1985, USC A Const. Amends 13-15 ACt April 9, 1866 §§ 1-10, 14m atat, 27.

The Plaintiff-Appellant's "Amended and Supplemental Complaint", dated March 30, 1981, and filed on April 3, 1981, certainly superceded the minimum requirements, in stating the Plaintiff-Appellant's individual claims in civ. action no. 80-1075E, Howard Security Services, Inc., et al vs. Johns Hopkins Hospital, 516 F Supp. 508 (1981).

in the case of Howard, Plaintiff, Blanheim, a Black, is president and apparently the sole stock-holder of Howard Security Services, a close corporation, wherein the Hospital is alleged to have failed to award a contract to Howard, because Blanhein is Black, wherein Howard's claims were under § 1981 E. O. 11246

and Blanheim's claims were under 42 USC § 1981 and Title VI, 42 USC, § 2000d, and E. O. 11246.

The Plaintiff-Appellant's, A Black, claims in the present case before this Court is under 42 USc, Sections 1981, 1983, 1985, 1986, and Title VI 42 USC, § 2000d and E. O. 11246, wherein it is alleged that the Defendants, through a conspiracy, failed to award contracts to the Plaintiff, because of the Plaintiff's race and non-union status. The Court most scrutiningly wrote, in the case of Howard:

> "Howard is a close corporation, apparently wholly owned by Blanheim and operated by him, as owner. To deal with Howard is, practically speaking, to deal with Blanheim." 516 F Supp. at 513.

In accordance to this rule: to deal with the Corporation, is to deal with the Appellant, individually, first, where the causes of actions alleged are based on the race of the Plaintiff-Appellant. Howard vs. Johns Hopkins Hospital; 516 F. Supp. at 513, (1981)

> "When a court considers a motion to dismiss for want of standings, the court must accept, as true, all material allegations of the complaint, and must construe the complaint, in favor of the complaining party". Warth vs. Seldin, 422 US At 501 95 S Ct 40.

APPENDIX C

PETITIONER PRO SE (PROPOSED) AMENDED COMPLAINT'S TITLE, JURISDICTION, AND AD DAMNUM , REQUESTING CLASS ACTION STATUS SUBMITTED BELOW, IN OCTOBER, 1982

file
WLJ/rm 10/7/82

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES
via Assignment of Claim and Cause of Action from
WALTER L. JONES DEVELOPMENT CORPORATION INC.
86 Cornell Avenue
Amherst, New York 14226
Plaintiff,

PROPOSED
AMENDED COMPLAINT
"CLASS ACTION"
CIV 80-1075E

-against-

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA)
and
WILLIAM E. STRAUB, TIMOTHY TOOHEY, JAMES H. WOLFORD, GEORGE L. WESSELL, RICHARD SOUTHARD, WILLIAM G. GISEL, JOHN F. KOPCYZNSKI, WILLIAM H. WENDEL, TED BECK, CHESTER R. HARDT, GEORGE J. TRIMPER, ALFONSO V. BELLANCA, JACK BAYER, JACOB F. SCHOELLKOPF V., JAMES E. KELLY, KENNETH G. KNIGHT, ERNESTINE R. GREEN, RICHARD J. ANTHONY, ROBERT D. GIOIA, JAMES M. WADSWORTH, RICHARD F. GALLAGHER, JOHN F. DOWNING, WILLIAM BULOW, (Officials and Employees).
181 Ellicott Street
Buffalo, New York 14205
NFTA and Officials and Employees
Defendants,

-and-

URBAN MASS TRANSPORTATION ADMINISTRATION (UMTA)
and
HIRAM J. WALKER, BROCK ADAMS, ROBERT PATRICELLI, JOSE CAMALLONGA,
RICHARD S. PAGE, HAROLD B. WILLIAMS, WESLEY A. PLUMMER, WILHELMENIA BURKE, ARTHUR B. TEELE, ANDREW LEWIS, (Officials and Employees)
400 Seventh Street SW
Washington, D.C. 20590

UMTA and Officials and Employees,
Defendants,

-and-

SIEGFRIED CONSTRUCTION CO., INC. (Contractor)
and
NEAL CAVANAUGH, JOSEPH DIPIRRO Officials
One Towne Centre-Audubon
Amherst, New York 14228

Contractor and Officials
Defendants,

-and-

SLATTERY ASSOCIATES, INC. (Contractor) and
JOHN SANDERS (Official)
46 Fifty-fourth Road
Maspeth, New York 11378

Contractor and Official
Defendants,

-and-

HERBERT F. DARLING, INC., (Contractor), and
HERBERT F. DARLING, JR., (Official)
131 California Drive
Williamsville, New York 14221

Contractor and Official,
Defendants,

-and-

JOHN W. COWPER CO., INC., (Contractor) and
IRVING FRANCIS, WARREN STRONG, (Official)
4246 Ridge Lea Road
Amherst, New York 14240

Contractor and Officials
Defendants,

-and-

FRUIN COLNON/TRAYLOR BROS., INC., (Contractor)
and
S.H. BARTHOLOMEW, TOM TRAYLOR - (Officials) and

OYNX CONSTRUCTION & EQUIPMENT CO., (Contractor)
and

WILLIAM STERLING - (Official)
RONALD M. FINO - (Union Official)
1706 Olive Street
St. Louis, Missouri 33103

Contractors and Officials and
Union Official
Defendants,

-and-

ALBERT ELIA BUILDING COMPANY INC., (Contractor)
and
ALBERT ELIA, LAWRENCE A. ELIA (Officials)
2749 Lockport Road
Niagara Falls, New York 14302

Contractor and Officials
Defendants,

-and-

S & M CONSTRUCTORS INC., (Contractor) and
VICTOR SCARAVILLI, VINTON GABESI, (Officials)
P.O. Box 508 Buffalo, New York 14215

Contractor and Officials,
Defendants,

-and-

AFL-CIO COUNCIL and
GEORGE L. WESSEL (Official)
686 Ellicott Suare Building
Buffalo, New Yorkk 14203

Council and Official
Defendants

-and-

CONSTRUCTION INDUSTRY COALITION FOR ECONOMIC
RECOVERY WESTERN NEW YORK (Coalition) and
BERNARD J. SHEVLIR, DONALD J. BLAIR (Official)
1150 Wherle Drive
Williamsville, New York 14221

Coalition and Officials,
Defendants,

-and-

CONSTRUCTION INDUSTRY EMPLOYEES ASSOCIATION, INC,
(Association, and
JOHN M. FUHRMANN, ROBERT R. LOGAN (official)
625 Ensminger Road
Tonawanda, New York 14150

Association and Official
Defendants,

-and-

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION INC.,
(Association) and
LAWRENCE J. STROHT (Official)
361 Delaware Avenue
Buffalo, New York 14202

Association and Official,
Defendants,

-and-

PLUMBING CONTRACTORS ASSOCIATION OF ERIE COUNTY,
NY INC
(Association), and
FRANK A. SCIBETTA (Official)
282 Delaware Avenue
Buffalo, New York 14202

Association and Official
Defendants,

-and-

MECHANICAL CONTRACTORS ASSOCIATION OF BUFFALO
&
VICINITY, INC., (Association) and
MARSHALL DAVIS (Official)
374 Delaware Avenue
Buffalo, New York 14202

Association and Official
Defendants,

-and-

WESTERN NEW YORK DUMP TRUCK OPERATORS
ASSOCIATION (Association) and
LESLIE A. SPRAGGON (Official)

Association and Official
Defendants.

-and-

BOILER MAKERS EMPLOYERS ASSOCIATION OF BUFFALO,
NEW YORK & VICINITY (Association) and
LOUIS D. MADIA, (Official)

Association and Official,
Defendants,

-and-

GREATER BUFFALO SHEET METAL & ROOFING ASSOCIATION,
(Association) and
PAUL GILBERT (Official)
961 A Maryvale Drive
Cheektowaga, New York 14225

Association and Official
Defendants,

-and-

ASBESTOS WORKERS LOCAL UNION NO. 4 (Union) and
JACK KELLEHER (Official)

186 Washington Highway
Snyder, New York 14226

Union and Official
Defendants,

-and-

BOILER MAKERS LOCAL UNION NO. 7 (Union) and
JOHN BARRY JARZYNSKI - (Official)
196 Orchard Park Road
W. Seneca, New York 14224

Union and Official
Defendants,

-and-

BRICKLAYERS LOCAL UNION NO. 45 (Union), and
JAMES JOSEPH McGOVERN - (Official),
1807 Elmwood Avenue
Buffalo, New York 14207

Union and Official,
Defendants,

-and-

CARPENTERS DISTRICT COUNCIL OF BUFFALO & VICINITY,
(Union), and
HERMAN F. BODEWES - (Official)
300 Kensington Avenue
Buffalo, New York 14214

Union and Official,
Defendants

-and-

CEMENT MASONS LOCAL UNION NO. 511 (Union) and
LEONARD S. CONIGLIO (Official
1685 Elmwood Avenue
Buffalo, New York 14207

Union and Official,
Defendants,

-and-

ELECTRICAL WORKERS LOCAL UNION NO. 41 (Union)
and
MELBOURNE H. RICE (Official)
S 3564 California Road
Orchard Park, New York 14127

Union and Official,
Defendants,

-and-

ELEVATOR CONSTRUCTORS LOCAL NO. 14 (Union) and
DONALD M. WINKLE - (Official)

1660 Kenmore Avenue
Buffalo, New York 14216

Union and Official
Defendants,

-and-

GLAZIERS LOCAL UNION NO. 660 (Union), and
JAMES J. COYLE, (Official)
2175 William Street
Buffalo, New York 14206

Union and Official,
Defendants,

-and-

IRONWORKERS LOCAL UNION NO. 6 (Union), and
JOSPEH F. COLERN, (Official)
196 Orchard Park Road
W. Seneca, New York 14224

Union and Official
Defendants,

-and-

LABORERS LOCAL UNION NO. 210 (Union) and
RONALD M. FINO, (Official)
481 Franklin Street
Buffalo, New York 14202

Union and Official
Defendants,

-and-

LATHERS LOCAL UNION NO. 32 (Union), and
FRANK A. SCIABARRASI (Official)
96 Dewitt Street
Buffalo, New York 14213

Union and Official,
Defendants,

-and-

OPERATING ENGINEERS LOCAL NO. 17 (Union) and
LEO HOPKINS (Official)
150 Commerce Parkway
W. Seneca, New York 14224

Union and Official,
Defendants,

-and-

PAINTERS DISTRICT COUNCIL NO. 4 (Union) and
JIM V. GRIFFO (Official)
12 Elmwood Avenue
Buffalo, New York 14210

Union and Official,
Defendants,

-and-

PLASTERERS LOCAL UNION NO. 8 (Union) and
SAMUEL F. ANTONIO (Official)
1373 E. Robinson
N. Tonawanda, New York 14120

Union and Official,
Defendants,

-and-

PLUMBERS LOCAL NO. 36 (Union) and
LARRY CONNELLY (Official)
175 GreatArrow Avenue
Buffalo, New York 14207

Union and Official,
defendants,

-and-

ROOFERS LOCAL UNION NO. 74 (Union) and
ANGELO PAGANO (Official)
770 Maryvale Drive
Buffalo, New York 14225

union and Official,
Defendants,

-and-

SHEET METAL WORKERS LOCAL UNION NO. 71 (Union)
and
GEORGE J. CUDDIHY (Official)
770 Maryvale Drive
Buffalo, New York 14225

Union and Official
Defendants,

-and-

SPRINKLER FITTERS LOCAL UNION NO. 703 (Union) and
WILLIAM G. THOMPSON, (Official)
198 Tim Tom Terrace
W. Seneca, New York 14224

Union and Official
Defendants,

-and-

STEAM FITTERS LOCAL UNION NO. 395 (Union) and
DONALD J. BLAIR, (Official)
175 Great Arrow Drive
Buffalo, New York 14207

Union and Official
Defendants,

-and-

TILE, MARBLE & TERRAZZO WORKERS HELPERS LOCAL
UNION NO. 8
(Union) and
DANIEL J. MECCA, (Official)
1283 E. Delevan Avenue
Buffalo, New York 14215

Union and Official
Defendants,

-and-

TRUCK DRIVERS LOCAL UNION NO. 449 (Union), and
ERWIN M. WALKER (Official)
1685 Elmwood Avenue
Buffalo, New York 14207

Union and Official,
Defendants.

JURISDICTION AND VENUE

1. In this action for declaratory relief and demands to redress the deprivation of rights secured to the Plaintiff and others by UMTA Circular 1165.1, 49 CFR 23, and as amended, Title 49 Transportation Part 23, Executive Order 11246 as amended (30 FRCP 12319), 42 USCA §2000(e) note, 42 USCA § 1981, 42 USCA § 1983, 5 USCA § 553, §1 Civil Rights Act of 1871, Title VI Civil Rights Act of 1964, 42 USC § 2000 et. seq., 40 USC § 471, 483(a), 42 USC § 6705(f) 2, 28 USC § 1331, United States Constitutional Amendments 5 and 14, 28 USC § 1343(3), 49 USC § 1604(1), Urban Mass Transportation Act of 1964, § 19 (Public law 95-599), 42 USCA § 1985.

2. This Court's jurisdiction is invoked, pursuant to Sections 1331 and 1343 of the Federal

Rules of Civil Procedure, including Rule 23, to redress deprivation of Plaintiff's (and others') protected Civil and Constitutional Rights, through Defendants collectively violating UMTA Circular 1165.1 as amended to 49 CFR 23, and Title 49 Transportation Part 23, et al., as stated above; which mandates Affirmative Action to encompass bona fide MINORITY BUSINESS ENTERPRISES, (hereinafter "MBE"s), in all phases of all Federal DOT funded construction contracts of the same geographical areas, as the Project, pursuant to 42 USCA Section 2000(e) note, Section 2000(d), et seq., Executive Order 11246, et al. Plaintiff invokes the Court's jurisdiction, pursuant to the 5th and 14th Amendmends of the US Constitution: 42 USCA Section 1983 - providing the Redress of Civil Rights denied an individual on the basis of Race, Color, National Origin, Class, etc., under the color of State Law, Regulations, Agreements, Custom or Usage; 42 USCA Section 1985 - which provides relief from Conspiracy to deprive persons of their Civil Rights. Jurisdiction of this Court is further invoked by all

of the above - cited Statutes.

3. The flagrant coercive violation of the above Laws are continuing, to date, within the Western District of the State of New York, and effectively depriving the Plaintiff (and others) of his (and their) protected Civil and Constitutional Rights to participate in the building of the Buffalo LIGHT RAIL RAPID TRANSIT, (hereinafter "LRRT") System.

WHEREFORE, Plaintiff prays for a Judgement against Defendants, and each of them, as follows:

1. For a Declaratory Order establishing the rights, duties, responsibilities and liabilities of the parties under the Federal Statutory Mandated Requirement of UMTA Circular 1165.1 as amended to 49 CFR 23, Title 49 Transportation part 23, et al.

2. For Compensable Damages, including gross profits, and special and general damages in the amount of Seventeen Million ($17,000,000.00) Dollars against all Defendants, and each of them.

3. For an Assignment of Punitive Damages in the amount of Fifty Million ($50,000,000.00) Dollats against all Individual Defendants and Defendants COALITION, ASSOCIATIONS, UNIONS and CONTRACTORS.

4. For an Order designating this action a Class Action, establishing a time period for other affected individuals and MBEs of Plaintiff's class to join this action through their attorneys and/or pro se.

And for such other and further relief as this Court deems just, equitable and proper.

DATED:

WALTER L. JONES
Attorney Pro se
POST OFFICE ADDRESS
86 Cornell Street
Amherst, New York 14226
Telephone: (716) 854-8526

TO: NFTA, et al

APPENDIX D

PETITIONER'S PRESENT (PROPOSED AMENDED AND SUPPLEMENTAL COMPLAINT DATED SEPTEMBER 6, 1988

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WALTER L. JONES, PRO SE

Plaintiff

-vs-

(PROPOSED) AMENDED AND SUPPLEMENTAL COMPLAINT CIVIL #80-1075E

NIAGARA FRONTIER TRANSPORTAION AUTHORITY, (NFTA), and ITS OFFICERS AND ADMINISTRATORS,

WILLIAM E. STRAUB, TIMOTHY TOOHEY, JAMES H. WOLFORD, GEORGE WESSEL, RICHARD C. SOUTHARD, JOHN F. DOWNING, WILLIAM G. GISEL, JOHN P. KOPCZYNSKI, WILLIAM H. WENDEL, JACK BAYER, ROBERT DRACUP, CHESTER R. HARDT, GEORGE H. TRIMPER, ALPHONSE V. BELLANCA, ERNESTINE R. GREEN, JACOB F. SCHOELLKOPF, V., JAMES E. KELLY, KENNETH G. KNIGHT, WILLIAM BULOW, ROBERT D. GIOIA, RONALD J. ANTHONY, RICHARD F. GALLAGHER, THEODORE BECK,

and

NEW YORK STATE DEPARTMENT OF TRANSPORTATION, (NYS DOT), and ITS OFFICERS AND ADMINISTRATORS,

and

WILLIAM HENNESSEY and HOWARD SCHAFFEY

and

URBAN MASS TRANSPORTATION ADMINISTRATION (UMTA), and ITS OFFICERS AND ADMINISTRATORS

HIRAM J. WALKER, BROCK ADAMS,
ROBERT PATRICELLI, JOSE CAMALLONGA,
RICHARD S. PAGE, HAROLD B. WILLIAMS,
WESLEY A. PLUMBER, WILHEMENIA BURKE,
ARTHUR B. TEELE, ANDREW LEWIS,

and

MARINE MIDLAND BANK, N.A., as
EXECUTORS and REPRESENTATIVES OF THE
ESTATE OF CORNELIUS J. CAVANAUGH,
JOSEPH DiPIRRO, and SIEGFRIED CONSTRUCTION
CO., INC.

and

JOHN J. SANDERS, and
SLATTERY ASSOCIATES, INC.,

and

IRVING FRANCIS, GERALD MILLER, and
JOHN W. COWPER CO., INC.

S. H. BARTHOLOMEW and FRUIN-COLNIN,
TOM TRAYLOR, TRAYLOR BROS., and
RONALD M. FINO, WILLIAM STERLING,
THOMAS T. GIAMMARESI, CARL J. MASTYKARZ,
and ONYX CONSTRUCTION & EQUIPMENT CO.

and

JOHN M. FUHRMANN and THELMA A. LOGAN,
as EXECUTORS and REPRESENTATIVES of
the ESTATE OF ROBERT P. LOGAN, and
CONSTRUCTION INDUSTRY EMPLOYERS ASSOCIATION,

and

DONALD BLAIR, and BUILDING TRADES COUNCIL
OF BUFFALO AND VICINITY,

and

RONALD M. FINO, and
LABORS LOCAL UNION NO. 210

JOSEPH F. COLERN, and MICHAEL FITZPATRICK, and IRONWORKERS LOCAL UNION NO. 6

and

LEONARD S. CONIGLIO, and CEMENT MASONS LOCAL UNION NO. 511

and

HERMAN F. BODEWES, and CARPENTERS DISTRICT COUNCIL,

and

LEO HOPKINS, and OPERATING ENGINEERS LOCAL UNION NO. 17, 17A and 17B,

and

LAWRENCE J. STROH, and NATIONAL ELECTRICAL CONTRACTORS' ASSOCIATION, WESTERN NEW YORK CHAPTER,

and

FRANK A. SCIBETTA, PLUMBING CONTRACTORS ASSOCIATION OF ERIE COUNTY, NY., INC.,

and

ALBERT ELIA, JR., ALBERT ELIA, III, ARTHUR ELIA, ALFRED ELIA, ALAN ELIA, DAVID ELIA, LAWRENCE A. ELIA, WILLIAM J. McDERMOTT, and ALBERT ELIA BUILDING COMPANY,

and

VICTOR SCARAVILLI, and S & M McHUGH/KENNY

and

JOHN DenBESTE, ELTON T. GRANT, and S & M CONSTRUCTORS, INC.,

and

GEORGE WESSEL, and AFL-CIO COUNCIL,

and

BERNARD J. SHEVILIR, DONALD BLAIR, and CONSTRUCTION INDUSTRY COALITION FOR ECONOMIC RECOVERY, WESTERN NEW YORK (COALITION),

and

SAMUEL D. MAGAVERN and SUZANNE C. DAVIS, as EXECUTORS and REPRESENTATIVES of the ESTATE of the late MARSHALL DAVIS, and MECHANICAL CONTRACTORS ASSOCIATION OF BUFFALO AND VICINITY, ETC.,

and

LOUIS MADIA, and BOILER MAKERS EMPLOYERS ASSOCIATION OF BUFFALO & VICINITY, ETC.,

and

PAUL GILBERT and GREATER BUFFALO SHEET METAL & ROOFING ASOCIATION,

and

JACK KELLEHER and ASBESTOS WORKERS LOCAL UNION NO. 4

and

JOHN BARRY JARZYNSKI and BOILER MAKERS LOCAL UNION NO. 7

and

JAMES JOSEPH McGOVERN, and BRICKLAYERS LOCAK UNION NO. 45

and

MELBOURNE H. RICE, and ELECTRICAL WORKERS LOCAL UNION NO. 41

DONALD M. WINKLE, and ELEVATOR CONSTRUCTION LOCAL UNION NO. 14

and

JAMES J. COYLE, and GLAZERS LOCAL UNION NO. 660

and

FRANK A. SCIABARRASI, and LATHERS LOCAL UNION NO. 32,

and

JIM V. GRIFFO, and PAINTERS DISTRICT COUNCIL NO. 4

and

SAMUEL F. ANTONIO, and PLASTERERS LOCAL UNION NO. 9

and

ANGELO PAGANO, and ROOFERS LOCAL UNION NO. 74

and

GEORGE J. CUDDIHY and SHEET METAL WORKERS LOCAL UNION NO. 71,

and

DANIEL J. MECCA, and TILE, MARBLE & TERRAZO WORKERS HELPERS LOCAL UNION NO. 8

and

ERWIN M. WALKER and TRUCK DRIVERS LOCAL UNION NO. 449

and

LARRY CONNELLY and PLUMBERS LOCAL UNION NO. 36

DONALD J. BLAIR, and STEAMFITTERS LOCAL UNION NO. 395

and

LESLIE A. SPRAFFON, and WESTERN NEW YORK DUMP TRUCK OPERATORS ASSOCIATION,

and

OSCAR RAYFORD, and UNIVERSAL SUPPLY EQUIPMENT CONSTRUCTION CO.,

and

EDWARD COLE, and TRESCO DISTRIBUTORS,

and

CARMEN A. GALLO and AMIGA CONSTRUCTION

and

EMANUEL HUMES and HUMES CONTRACTING CO.

and

EMANUEL HUMES INDUSTRIAL ELECTRIC

and

JOSEPH MYLES and TRASH LAND TRUCKING

and

ROBERT CHESTER and KEYSTONE STEEL

and

ROBERT L. PITTS and P & S SUPPLY

and

JAMES LYLES and L & W CONCRETE

and

DeVILUS GRAY and AFTCO INTERNATIONAL TRADING CO.

PAUL HARRISON and DOWNTOWN DUMP TRUCK SERVICE

and

DEAN WILLIAMS and NATIVE AMERICAN CONSTRUCTION COMPANY

and

WILLIAM TABORN and NELSON PETERS ASSOCIATES

and

WASHINGTON BENNETT, WHITWORTH FERGUSON, JR.,
and
FERGUSON-BENNETT CO., INC.

and

GLEN CLAYTOR, FRANK J. McGUIRE,
and
CCC/IPPL

Defendants

SECTION I

Plaintiff, WALTER L. JONES, Pro se for himself, as a black, natural person, the sole shareholder of WALTER L. JONES DEVELOPMENT CORPORATION, INC., a Minority Business Enterprise, (MBE),

merged and supplemental claims against the defendants, and each of them, complain

and upon information and belief, allege the following:

SECTION II

JURISDICTIONAL STATEMENT

1. Plaintiff, JONES, and his wholly owned corporation, and the defendants are all citizens, private entities and/or agencies of the United States of America who reside and/or did business in the City of Buffalo, New York, where the claims herein alleged arose, within the judicial District of Western New York. The Court has jurisdiction and venue under Sections 1331, 1332(A)(1), 1337, 1343(A)(1)(2)(3)(4), 1346(B), 1357, 1391(B)(C)(E).

2. This action arises under the Fifth, Thirteenth and Fourteenth Amendments as well as under the Civil Rights Act of

1866, Sections 1-10, 14 Statute 27; Civil Rights Act of 1871; Title VI of the Civil Rights Act of 1964, Sections 601, 602 and 603, under 78 Statute, 252,42 USC, 2000(d) to 2000.4; pub. L. 95 599; Urban Transportation Act of 1964, Section 314 as Amended 42 USC 1615 Section 19 Codified at 2000d, Title 49 CFR, DOT, Subtitle A.O.S., Part 21, as amended, DOT order 4000.7(a); UMTA. Circular 1165.1 as amended by Title 49 Section 23.1, et seq.; and under 42 USC 1981, 1983, 1985(3), 1986 and 1988.

SECTION III

PLAINTIFF'S COMPLIANCE WITH ADMINISTRATIVE PROCEDURES

Within 180 days after plaintiff JONES was initially deprived of the benefits of his statutory entitlements of which he complained, plaintiff, JONES, caused letters

of complaints to be forwarded to defendant, BROCK ADAMS, the Secretary of defendant - UMTA. Said letters are dated February 22, 1979, March 5, 1979, and May 17, 1979. On March 30, 1979, plaintiff JONES caused an additional complaint to be forwarded to defendant GARY GAYTON of defendant - UMTA; all complaining of racial discrimination and deprivation of his entitlement under Title VI in violation of his Civil and Constitutional rights by the concerted acts of NFTA's officials, and the White officials and/or representatives of the unions, associations, coalitions, and prime contractors herein named as defendants, all of which were responded to negatively. The District Court entered an Order in this case on October 7, 1981 determining that exhaustion of administrative remedies were unnecessary if the administsrative remedy is

inadequate to vindicate the complainants' rights, and that plaintiff's letters of 1979 to defendant UMTA officials, were official grievances for all practical purposes in this lawsuit.

SECTION IV

INTRODUCTORY STATEMENT

1. Based upon the glaring social and economical plight of Negroes (Blacks) within the United States of America caused by historic race discrimination, Congress enacted the Civil Rights Act of 1964 in order to provide political, economical and social equality for persons of minority groups within the United States of America, (the "Civil Rights Act of 1964"), Pub. L., No. 88-352, 78 Stat. 252, codified at 42 USC, 2000d, et seq. (hereinafter the "ACT").

2. Congress further created the Urban Mass Transportation Administration Act of 1964 in order to provide employment and business opportunities for the benefit of minority persons through their business enterprises within the United States of America. (The Urban Mass Transportation Act of 1964) Section 12(1) as amended, 49 USC, 1608 (f), as amended by Section 314, at 49 USC 1615, Section 19, Codified at 42 USC 2000(d), et seq. (hereinafter the "ACT").

3. The federal regulations created under the ACTS required all United States Government agencies to take affirmative action, to avoid racial and ethnic discrimination, and where possible, to make up for past discrimination by assisting socially and economically disadvantaged minority persons and their

valid MBE firms in order that they may participate to the "maximum extent" in "all phases" on projects that were funded by federal funds so that minority persons through their MBE firms could share in the salaries, equities, expenses, profits, dividends, and other benefits on projects administered by their respective governmental agencies.

4. Pursuant to the Congressional Federal Act and regulatory provisions set forth herein, defendant - NFTA's officers and administrators while participating in an unlawful scheme and conspiracy to use only white owned unionized construction firms to construct the Buffalo subway, made application to defendant -UMTA for a capital improvement grant which exceeded $430,000.000.00 for the constructing and

equipping of an underground subway system within the City of Buffalo.

5. Pursuant to the congressional federal "ACTS" and statutory regulatory provisions set forth herein, defendant - UMTA, while participating in an unlawful scheme and conspiracy to use only White owned unionized construction firms to construct the Buffalo Subway Construction Project, issued Circular 1165.1, dated December 30, 1977, which was amended by Title 49, dated March 30, 1980, requiring that any recipient receiving UMTA funds exceeding $1,000,000,00, to establish a written Minority Business Enterprise (MBE) Program, describing the "affirmative" steps that would be implemented to involve MBEs "in all phases"of the activities, as a binding condition of receiving the grant, and as a binding, contractural obligation under the "ACTS".

6. Defendant, NFTA's officers and administrators, while participating in the unlawful scheme and conspiracy to use only White, unionized constructions firms to construct the project, prepared and submitted its required written MBE Program Agreement to UMTA in 1978 as a condition for receiving the federal grant to construct the subway system in Buffalo, New York.

7. Section VIII of the MBE Program (agreement) provided under "Procedures to Ensure that MBEs will have an Equitable Opportunity", that "The Authority realizes that the mere setting of MBE goals will not ensure that MBEs have an equitable opportunity. To ensure that MBEs will have an equitable opportunity, the following affirmative actions-techniques will be implemented:"

a. "Developing bid packages and requests for proposals, so as to increase MBE participation."

b. "Designating facilities on the basis of MBE capabilities, and their bonding limits."

c. "Using MBEs in construction management contracts."

d. "Encouraging the formation of joint ventures among MBEs and between minority and majority firms."

e. "Considering purchasing supplies and/or leasing the required equipment for a job and then contracting only for the expertise required to perform the work."

f. "Providing specifications and RFPs in a timely manner to the minority entrepreneurial community."

g. "Establishing prorated payment and delivery schedules."

h. "Using the least complicated bid forms."

i. "Using restricted competitive negotiations, where appropriate and allowable."

j. "Holding pre-bid conferences to emphasize MBE requirements and explain the forms that must be submitted with the bid, regarding MBE participation, and documentation required, outlining efforts to obtain minority sub-contractors and joint venture partners, and the use and availability of the MBE directory."

The MBE Program further provided:

"The Authority, will assist MBEs in overcoming barriers to participate by the following means:"

a. "Coordination with financial institutions, insurance and bonding companies, and prime contractors to alleviate financial barriers faced by MBEs";

b. "Where feasible, NFTA will speed up payment schedules for MBEs to alleviate cash flow problems";

c. "Provide the opportunity for MBEs to review and evaluate successful bid documents of previous similar contracts";

d. "After bid openings, conduct debriefing sessions to point out specific reasons for unsuccessful bids";

e. "Through the MBE News Bulletin and other media, provide timely notice of projected procurement opportunities";

f. "NFTA will periodically conduct seminars and workshops to provide MBEs with instructions on job performance requirements, preparation of bid specifications, procurement policy, procedures and general bid requirements, as necessary".

8. Defendant NFTA's officers and administrators assured that it would take prompt measures necessary to effectuate the Agreements as the recipient, without limiting the aforementioned general assurances and gave the following additional specific assurances in its application which also bound the White benefit owners of the participating unionized contracting firms who were awarded contracts on the project.

A. "That the Recipient agrees that each "program" and each "facility" as defined in sub-sections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (With regard to a "facility") operated in compliance with all requirements imposed by or pursuant to the Regulations."

B. "That the Recipient shall insert the following notification in all solicitations for bids for work or material, subject to the Regulations and made in connection with a project under the Urban Mass Transportation Act of 1964, as amended (the UMTA Act), and in adapted form, in all

proposals for negotiated agreements."

C. "The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000-4, and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such ACT, hereby notifies all bidders that it will affirmatively insure that in regard to any contract entered into, pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation, and will not be discriminated against, on the grounds of race, color, sex or national origin, in consideration for an award."

D. "That the Recipient shall insert the clauses of Appendix A of this assurances in every contract subject to the ACT and the regulations."

E. "THIS ASSURANCE is given in considerations of and for the purpose of obtaining any and all Federal Grants, loans, contracts, property, discounts, or other federal financial assistance, extended after the date hereof to the Recipient, by the Department of Transportation, under the Federal

Urban Mass Transportation Programs, and is binding on it, other recipients, subgrantees, contractors subcontractors, transferees, successors in interest, and other participants in the Federal Urban Mass Transportation Program.

9. The Agreements and Commitments made in the MBE Program prepared and submitted by defendant NFTA's officers and administrators, and the Agreements and Commitments made by NFTA's officers and administrators in their applications to obtain the federal grants, was incorporated into and became a part of the Funding Agreement and Contract between defendants NFTA and UMTA, which was binding and applicable to all DOT assisted contracts advertised and let by the defendant - NFTA, after the approved date of the MBE Program under which the contracts were let on the Project.

10. Defendant NFTA's officers and administrators further provided in their Project Manuals for each Contract awarded on the Project the following requirements and assurances.

A. "It is mutually understood, and agreed, that the Contractors will attempt to utilize minority contractors, sub-contractors or sub-contractors to the maximum extent feasible." As used in this Contract, the term Minority Business Enterprise, means a business enterprise that is owned and controlled by one or more minority persons. The term, minority persons, means a person, who is Black, Hispanic, Asian American, American Indian, Alaskan, native, or a woman, regardless of race, or ethnicity. The phrase, "owned and controlled" as used in this definition, means a business which is (1) a sole proprietorship, legitimately owned by an individual who is a minority person, (2) a partnership or joint venture controlled by minority persons, and in which at least 51% of the beneficial ownership interests legitimately are held by minority persons, and in which at least 51% of the voting interests legitimately are held by minority persons."

B. The contract entered into by and between the successful bidder and the Authority is subject to the requirements of a financial assistance contract between the Authority, the U.S. Department of Transportation, and New York Stte. The contractor and his sub-contractors performing work at the job site will be required to comply with the safety and health regulations for construction 29 CFR Parts 1910 and 1916, the Davis-Bacon Act, the Contract Work Hours Standards, Title VI of the Civil Rights Act of 1964, as amended, UMTA Circular 1165.1, Presidential Executive Orders 11246 & 11265, DOT Order 4000.7A, and all other applicable Equal Employment Opportunity and Minority Business Enterprise laws, regulations, orders and guidelines; (emphasis added). The Authority hereby notifies all bidders that it will affirmatively ensure that with regard to any contract entered into pursuant to this advertisement for bids, opportunity for bids, opportunity to submit bids in response to this invitation and will not be discriminated against, on the grounds of race, religion, color, sex, or national origin, in consideration for an award."

11. That in accordance to the "ACTS" Statutes, Regulations, Programs, Agreements and Contracts, plaintiff JONES, who is Black, and a member of the protected class under the "ACTS" was entitled to participate, by mandate in accordance to his statutory entitlements under the "ACTS" and benefit from prime contracts low-bid by him on the federally funded Project through his non union "MBE" firm by being to the "maximum extent", assisted and awarded the low-bid prime contracts that were prepared and submitted to defendant NFTA by plaintiff JONES at scheduled bid openings.

12. That further, in accordance to the "ACTS", Statutes, Regulations, Programs, Agreements and Contracts, plaintiff JONES, as a member of the protected class under the "ACTS", was entitled to participate by mandate and benfit from the joint venture and/or sub contracts proposed by him on the federally funded Projects through his non

union MBE firm by being , to the "maximum extent", assisted and awarded the joint venture and/or sub contracts proposed to defendant White unionized contracting firms, officers and administrators.

13. That further, in accordance to the "ACTS", Statutes, Regulations, Programs, Agreements and Grant Contracts, plaintiff, JONES' MBE firm was certified by defendant NFTA as a valid "MBE" based upon plaintiff JONES' race and his ownership of the firm and based upon plaintiff, JONES and his firm, both being beneficiaries of the "ACTS" due to plaintiff JONES' race, social and economical status.

14. Nonetheless, the defendant NFTA's officers and administrators while acting in concert with all other defendants, under color, rejected each and every low bid

submitted by plaintiff JONES, and the defendants, White, unionized contracting firms, officers and administrators, while acting in concert with all other defendants, under color, rejected and/or ignored each sub-contract and/or joint venture proposal submitted by plaintiff JONES; all in violation of the "ACTS", Statutory, and Regulatory provisions as set forth in Section IV herein, and in furtherance of the conspiracy to deprive plaintiff JONES of the benefit of his and his firm's statutory entitlements, and allow for White persons to obtain the experiences, salaries, equities, dividends, profits and other benefits earmarked for the benefit of minority persons through their valid MBE firms on the federally funded Buffalo Subway Construction Project.

SECTION V

1. That at all times material to this merged Amended and Supplemental Complaint, the defendant, URBAN MASS TRANSPORTATION ADMINISTRATION (hereinafter UMTA), and its individual officials and administrators are a United States Government Agency and a part of the United States Department of Transportation (hereinafter DOT). Defendant UMTA was responsible for administering the URBAN MASS TRANSPORTATION ACT OF 1964, As Amended 49 U.S.C. 1601-1615) under the Capitals Facilities Grant and Loan Program, and other programs, and to disburse federal funds to state and local agencies, and for the enforcement of the Regulatory and Statutory provisions under the "ACTS".

2. The defendant, NFTA and its individual officials, Board of Commissioners and administrators are a New York State

public benefit corporation established in 1967, under the New York State Public Authorities Law. Defendant had the power to enter into contracts under the "ACTS" with defendants UMTA, as agent and fiduciary for the United States Government.

3. Defendant NEW YORK STATE DEPARTMENT OF TRANSPORTATION (hereinafter NYS DOT) and its individual administrators are a New York State agency who jointly funded and administered the Buffalo Subway Construction Projects within the City of Buffalo under the "ACTS" and Regulatory provision as joint fiduciaries under the "ACTS".

4. Defendants NFTA and NYS DOT its officers and administrators, did, in the implementation of their plans to obtain a federal capital improvement grant from defendant UMTA via DOT for the construction of an underground subway system within the

City of Buffalo, while acting in concert with all other defendants, under color, entered into an unlawful, monopolistic, discriminatory conspiracy to use only white owned contracting firms with the aid of minority "front" impostering supply and construction firms to construct the federally funded subway construction project in furtherance of the unlawful scheme and conspiracy to allow White persons and their firms to obtain the salaries, experiences, equities, dividends and profits earmarked for the benefit of minority persons through their valid MBE firms on the federally funded Buffalo Subway Construction Project.

5. The defendant NFTA commenced the alleged unlawful conspiracy by obtaining, on behalf of defendant UMTA, a monopolistic, discriminatory statement/agreement dated May 15, 1976 from the White individuals named in

Section XI herein, who would be involved in the construction of the Project as the "Western New York Construction Industrial Coalition for Economic Recovery" (hereinafter defendant COALITION).

6. The statement/agreement provided that should the Project be approved and funded, the defendant COALITION would serve as the Advisory Committee to work with defendant UMTA and defendant NFTA, to complete the Project.

7. The statement/agreement further provided that the defendant COALITION would be fully responsive and responsible for their commitment, and assured that there would be no work stoppages, nor lock-outs during the terms of the Project.

8. The defendants, NFTA, NYS DOT and UMTA in furtherance of the conspiracy to use only White owned unionized contracting firms and minority "fronts" firms to construct the Project, arbitrarily and capriciously obtained the statement/agreement from the all White COALITION membership, acting through their individual White officers and/or business representatives, with clear knowledge that the defendant COALITION White members had and would continue to ratify labor agreements with White persons who owned participating construction firms that contained unconstitutional sub-contract provisions which would exclude and deprive plaintiff JONES and his non-union MBE contracting firm of their statutory entitlements in violation of their civil and constitutional rights to participate on the federally funded Buffalo

Subway Construction Project causing plaintiff JONES, as the sole beneficiary of his MBE firm to be humiliated, embarrassed and injured, economically and to suffer severe mental and emotional distresses.

SECTION VI

PLAINTIFF PARTY

That at all times material to this merged Amended and Supplemental Complaint, plaintiff JONES is a Black male (Negro) of American citizenship and a member of the protected class under the statutory, constitutional and regulatory provisions as set forth in Section IV herein, who is the sole stockholder and sole beneficiary of his corporation, a "non-union" "MBE" construction development and general firm, which was organized under the laws of the State of New York, and defined as a Minority Business Enterprise (MBE) under federal statutes and

regulations due to plaintiff JONES' individual racial origin, economical and social status who was arbitrarily, capriciously and maliciously denied mandated assistance and low bid contracts by defendant NFTA's officers and administrators acting in concert with the other defendants. Plaintiff JONES was further arbitrarily, capriciously, willfully, intentionally, purposefully and maliciously denied mandated assistance and proposed sub-contracts and/or joint venture contracts by the White individual defendants who owned unionized contracting firms while acting in concert with the other defendants on the federally funded Buffalo Subway Construction Project.

SECTION VII

DEFENDANTS PARTIES

That at all times material to this merged Amended and Supplemental Complaint, defendants, NIAGARA FRONTIER TRANSPORTATION

AUTHORITY (hereinafter NFTA), its individual legal advisors, Board of Commissioners, Executive Officers, Administrators and their successors, WILLIAM E. STRAUB, TIMOTHY TOOHEY, JAMES H. WOLFORD, GEORGE L. WESSEL, RICHARD C. SOUTHARD, JOHN F. DOWNING, WILLIAM G. GISEL, JOHN F. KOPCZYNSKI, WILLIAM H. WENDEL, JACK BAYER, CHESTER R. HARDT, GEORGE J. TRIMPER, ALFONSE V. BELLANCA, ERNESTINE R. GREEN, JACOB B. SCHOELLFOPF, C., JAMES E. KELLY, KENNETH G. KNIGHT, WILLIAM BULOW, ROBERT D. GIOIA, RONALD J. ANTHONY, RAYMOND F. GALLAGHER, ROBERT DRACUP and THEODORE BECK, are a local public entity and a fiduciary of the United States, coordinating transportation for Western New York, as authorized under New York State Law, who was the recipient of a federal and state grant in the approximate amunt of $535,000,000. (five hundred thirty five million) dollars from defendant UMTA and defendant NYS DOT, to

build a subway system in Buffalo, New York, by agreeing to the statutory and regulatory provisions, as set forth in Section IV herein, who, in concert with all other defendants named herein, arbitrarily, capriciously, willfully, intentionally, purposefully, and maliciously breached their fiduciary agreement and rejected each and every low bid and request for assistance prepared, and submitted by plaintiff JONES, all in violation of the "ACTS", statutory and regulatory provisions, as set forth in Section IV herein, and in breach of their fiduciary agreement as set forth under Section IV herein in furtherance of the conspiracy to deprive plaintiff JONES of the benefit of his and his MBE firm's statutory entitlements under Title VI on the federally funded Buffalo Subway Construction Project in violation of his civil and constitutional

rights as the owner of his MBE contracting firm. These unlawful acts allowed for White persons and their firms to obtain salaries, dividends, experiences, equities, profits and other benefits earmarked for the benefit of minority persons through their valid MBE firm's participation on the federally funded Buffalo Subway Construction Project.

SECTION VIII

DEFENDANT PARTIES

That at all times material to this merged Amended and Supplemental Complaint, the defendants, URBAN MASS TRANSPORTATION ADMINISTRATION (hereinafter UMTA), its officials, administrators and successors, HIRAM J. WALKER, BROCK ADAMS, ROBERT PARTICELLI, JOSE COMALLONGA, RICHARD S. PAGE, HAROLD B. WILLIAMS, WESLEY A. PLUMBER, WILHELMINA BURKE, ARTHUR B.TEELE, ANDREW LEWIS, is a division and fiduciary agency of the United States of

America, Department of Transportation, under the Urban Mass Transportation Act of 1964, who funded 80% of the Buffalo Subway Construction Project, who agreed as the fiduciary to enforce the statutory and regulatory provisions as set forth in Section IV herein, who, in concert with all other defendant named herein, arbitrarily and capriciously ignored and breached their fiduciary agreement and denied all mandated enforcement assistance requested by plaintiff JONES in furtherance of the conspiracy.

SECTION IX

DEFENDANT PARTIES

That at all times material to this merged Amended and Supplemental Complaint, the defendants, URBAN MASS TRANSPORTATION ADMINISTRATION (hereinafter UMTA), its

officials, administrators and successors, HIRAM J. WALKER, BROCK ADAMS, ROBERT PARTICELLI, JOSE COMALLONGA, RICHARD S. PAGE, HAROLD B. WILLIAMS, WESLEY A. PLUMBER, WILHELMINA BURKE, ARTHUR B. TEELE, ANDREW LEWIS is a division and fiduciary agency of the United States of America, Department of Transportation, under the Urban Mass Transportation "ACT" of 1964, who funded 80% of the Buffalo Subway Construction Project who agreed as the fiduciary to enforce the statutory and regulatory provisions as set forth in Section IV herein, who, in concert with all other defendants named herein arbitrairly and capriciously ignored and breached their fiduciary agreement and denied all mandated enforcement assistance requested by plaintiff JONES in furtherance of the conspiracy.

SECTION IX

DEFENDANT PARTIES

That at all times material to this merged Amended and Supplemental Complaint, the defendants, NEW YORK STATE DEPARTMENT OF TRANSPORTATION (hereinafter NYS DOT) and its executive officers and administrators, WILLIAMS C. HENNESSEY and HOWARD SCHAFFEY, is a division and agency of New York State and a fiduciary of the United States who funded 20% of the Buffalo Subway Construction Project under the Urban Mass Tansportation Act of 1964 and agreed to jointly administer the project and to enforce the statutory and regulatory provisions as set forth in Section IV herein who in conert with all other defendants named herein arbitrarily and capriciously ignored and breached their fiduciary agreement and made no effort to enforce the "ACTS" statutory and regulatory provisions

as set forth in Section IV herein, on behalf of plaintiff JONES in furtherance of the conspiracy.

SECTION X

DEFENDANT PARTIES

That at all times material to this merged Amended and Supplemental Complaint, defendant contractors and their respective White officers, administrators and executors, MARINE MIDLAND BANK, N.A., as executors and representatives of the estate of the late CORNELIUS J. CAVANAUGH, JOSEPH DiPIRRO and SIEGFRIED CONSTRUCTION CO., INC.; JOHN J. SANDERS and SLATTERY ASSOCIATES, INC.; IRVING FRANCIS, GERALD MILLER and JOHN W. COWPER CO., INC.; S. H. BARTHOLOMEW, and FRUIN-COLNON, TOM TRAYLOR and TRAYLOR BROS., RONALD M. FINO, THOMAS D. GIAMMARESI, CARL J. MASTYKARZ, WILLIAMS STERLING and ONYX CONSTRUCTION & EQUIPMENT CO.; ALBERT ELIA, JR., ALBERT ELIA, III, ARTHUR ELIA,

ALFRED ELIA, ALAN ELIA, DAVID ELIA, LAWRENCE ELIA, and WILLIAMS J. McDERMOTT, and ALBERT ELIA BUILDING CO., INC.; JOHN DenBESTE, ELTON T. GRANT and S & M CONSTRUCTORS, INC.; VICTOR SCARAVILLI, and S & M /McHUGH & KENNY are White individuals and unionized White owned prime contracting firms and sub-fiduciaries of the United States, who were awarded major prime contracts by the defendant, NFTA's Board of Commissioners on the federally funded Buffalo Subway Construction Project, and who, in concert with all other defendants named herein arbitrarily and capriciously awarded the majority of their purported sub and supply contracts to minority "fronts" firms in furtherance of the conspiracy to deprive plaintiff JONES of the benefit of his and his MBE firm's statutory entitlements under Title VI in violation of his civil and constitutional rights as the

benefit owner of his non-union MBE contracting firm; all for the purposes of allowing and providing for White persons and their firms to obtain the salaries, dividends, expenses, equities, profits and other benefits earmarked for the benefit of minority persons through their valid MBE firms on the federally funded Buffalo Subway Construction Project, all in violation of the ACTS, statutory and regulatory provisions and their fiduciary agreements as set forth in Section IV herein.

SECTION XI

DEFENDANTS PARTIES

That at all times material to this merged Amended and Supplemental Complaint, defendants, council, associations, unions and their authorized White officers and/or representatives ROBERT R. LOGAN, JOHN A. FUHRMANN and CONSTRUCTION INDUSTRY EMPLOYERS ASSOCIATION; GEORGE WESSEL, and AFL-CIO COUNCIL; RONALD M. FINO and LABORERS LOCAL

UNION NO. 210; JOSEPH F. COLERN, MICHAEL FITZPATRICK and IRON WORKERS LOCAL UNION NO. 6; LEONARD S. CONIGLIO, and CEMENT MASONS LOCAL UNION NO. 511; HERMAN F. BODEWES and CARPENTERS DISTRICT COUNCIL; LEO HOPKINS and OPERATING ENGINEERS LOCAL UNION NO. 17, 17A and 17B: LAWRENCE J. STROH and NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, W.N.Y. CHAPTER; FRANK A. SCIBETTA and PLUMBING CONTRACTORS ASSOCIATION OF ERIE COUNTY, N.Y., INC.; BERNARD J. SHEVLIR, DONALD J. BALIR and WESTERN NEW YORK CONSTRUCTION INDUSTRY COALITION FOR ECONOMIC RECOVERY; MECHANICAL CONTRACTORS ASSOCIATION OF BUFFALO & VICINITY, INC., and SAMUEL D. MAGAVERN, SUZANNE C. DAVIS, as executors and representatives of the estate fo the late MARSHALL DAVIS; WESTERN

NEW YORK DUMP TRUCK OPERATORS ASSOCIATION, and LESLIE A. SPRAGGON; LOUIS D. MADIA, and BOILER MAKERS EMPLOYERS' ASSOCIATION" GREATER BU||FALO SHEET METAL & ROOFING ASSOCIATION, and PAUL GILBERT; ASBESTOS WORKERS, LOCAL UNION NO. 4 and JACK KELLEHER; BOILER MAKERS LOCAL UNION NO. 7 and JOHN BARRY JARZYNSKI; BRICKLAYERS LOCAL UNION NO. 45 and JAMES JOSEPH McGOVERN; ELECTRICAL WORKERS LOCAL UNION NO. 41, and MELBOURNE H. RICE; ELEVATOR CONSTRUCTORS LOCAL NO. 14, and DONALD M. WINKLE; GLAZIERS LOCAL UNION NO. 660, and JAMES J. COYLE; LATHERS LOCAL UNION NO. 32, and FRANK A. SCIABARRASI; PAINTERS DISTRICT COUNCIL NO. 4 and JIM V. GRIFFO; PLASTERERS LOCAL UNION NO. 9, and SAMUEL F. ANTONIO; PIPE FITTERS LOCAL UNION NO. 74, and ANGELO PAGANO; SHEET METAL WORKERS LOCAL UNION NO. 71, and GEORGE J. CUDDIHY; STEAMFITTERS LOCAL UNION NO. 395, and DONALD J.

BLAIR; TILE MARBLE & TERRAZZO WORKERS - HELPERS LOCAL UNION NO. 449 and ERWIN M. WALKER; PLUMBERS LOCAL UNION NO. 36, and LARRY CONNELLY; as a Coalition of all White persons, representing the local unionized, construction industry who as the advisory committee were bound as sub-recipients by the fiduciary agreements of the defendants NFTA, NYS-DOT and UMTA on the federally funded Buffalo Subway Construction Project and who in concert with all other defendants named herein arbitrarily and capriciously ignored and breached their fiduciary agreements by executing and sanctioning discriminatory, exclusionary, monopolistic agreements with defendants UMTA via defendant, NFTA and NYS-DOT after having sanctioned and/or ratified labor agreements with defendants' White

individual officers of unionized prime contracting firms containing unconstitutional, discriminatory, exclusionary, monopolistic sub-contract provisions that caused the exclusion of plaintiff JONES' non-union firm's participation on the federally funded subway construction project, in violation of the "ACTS", statutory and regulatory provisions as set forth in Section IV herein as the "threshold" of the conspiracy.

SECTION XII

DEFENDANTS PARTIES

That at all times material to this merged Amended and Supplemental Complaint, defendants, WILLIAM TABORN and NELSON PETERS ASSOCIATES; OSCAR RAYFORD and UNIVERSAL EQUIPMENT and CONSTRUCTION CO.; EDWARD COLE and TESCO DISTRIBUTING; CARMEN A. GALLO and AMIGA CONSTRUCTION; EMANUEL HUMES and HUMES INDUSTRIAL & ELECTRICAL and HUMES CONTRACTING CO.; JOSEPH MYLES and TRASHLAND TRUCKING; ROBERT CHESTER and KEYSTONE STEEL; ROBERT L. PITTS and P & S SUPPLY; JAMES LYLE and L & W CONCRETE; DEVILUS GRAY and AFTCO INTERNATIONAL TRADING CO.; PAUL HARRISON and DOWNTOWN DUMP TRUCK SERVICE; DEAN WILLIAMS and NATIVE AMERICAN CONSTRUCTION CO., RONALD M. FINO, THOMAS GIAMARRESI, CARL T. MASTYKARZ, WILLIAM STERLING AND ONYX CONSTRUCTION & EQUIPMENT CO.; WASHINGTON BENNETT, WHITWORTH FERGUSON, JR., and FERGUSON/BENNETT CO.; GLENN CLAYTOR and FRANK McGUIRE and CCC/IPPL

are minority and White persons and "MBE" "front" firms and a purported "MBE' assistant agency who in concert with all other defendants named herein, arbitrarily and capriciously obtained purported "MBE" contracts on the federally funded Buffalo Subway Construction Project totalling approximately $80,000,000.00 as part of the conspiracy to deprive plaintiff JONES of the benefits of his statutory entitlements on the project, in violatoin of his civil and constitutional rights to participate through his "MBE" non-union firm and share in the salaries, experiences, equities, dividends, profits and other benefits earmarked for the benefit of minority persons through their valid "MBE" firms on the federally funded Buffalo Subway Construction Project, and as part of the unlawful scheme and conspiracy

that allowed White persons and their firms to obtain salaries, experiences, equities, dividends, profits and other benefits earmarked for the benefit of minority persons through their valid "MBE" firms on the federally funded project, all in violation of the "ACTS" statutory and regulatory provisions as set forth in Section IV herein.

COUNT I

The plaintiff, JONES, realleges Section I through XII, as if they were fully restated as part of this Count, and alleges:

1. That defendant, NFTA, through its officers and administrators, commenced acting the unlawful conspiracy to use only White owned, unionized construction firms and minocity "front" firms to construct the federally funded Buffalo Subway Construction Project by making application tin 1976 to defendant UMTA's administrators for a mass transportation capital improvement grant under the "Civil Rights and Urban Mass Transportation Acts", which were amended May 15, 1978.

2. It was further part of the conspiracy that NFTA's officers and administrators falsely agreed that as a condition of receiving any federal financial assistance from the Department of Transporta-

tion, via defendant UMTA, they would comply with Title VI of the Civil Rights Act of 1964, 78 Stat., 252, 42 USC, 2000-d, 2000-4, and all requirements imposed by/ or pursuant to Title 49, Code of Federal Regulation, and other pertinent directives, to the end, and in accordance with the "ACTS", agreements and contracts and the statutory regulations as set forth herein in Section IV with no intent of doing so.

3. It was further part of the conspiracy that NFTA, its officers and administrators further falsely assured that they would take prompt measures necessary to effectuate the "MBE" program agreements with no intent of doing so; all in violation of the "ACTS" contracts, agreements, statutory and regulatory provisions as set forth herein Section IV, for the purpose of obtaining the grant upon unlawful, false

pretenses in order to allow white persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded Buffalo Subway Construction Project.

COUNT II

Plaintiff JONES realleges Sections I through XII and Count I, as if they were fully restated as part of this Count and alleges:

1. That plaintiff JONES as a beneficiary of the "ACTS" and as the only minority who submitted bids to defendant NFTA, obtained plans, prepared and submitted seven (7) sealed bids with requests for assistance at defendant NFTA's scheduled bid openings on behalf of his solely owned "MBE" firm, being the competitive low bidder on four (4) separate cut and cover sections of the project totaling $56,602,478.00 in accord-

ance to his "MBE" firm's non-union status and low overhead bid factors.

2. Nonetheless, and in furtherance of the conspiracy, the defendant, NFTA, officers and administrators named herein Section VII, while acting in concert and under color with the other individual White defendants, and in breach of the aforementioned agreements did, arbitrarily, capriciously, intentionally and purposefully, with malice, reject each and every low bid and request for assistance submitted by plaintiff JONES in furtherance of the conspiracy to deprive plaintiff JONES of the benefit of his and his firm's non-union "MBE" statutory entitlements and because of his race and because of his "MBE" firm's general contracting non-union status, and to provide for White persons and their firms to unlawfully obtain the salaries, experiences, equities, dividends, profits,

and other benefits earmarked for the benefit of minority persons through their valid "MBE" firms on the federally funded Buffalo Subway Construction Project; all in violation of the "ACTS", agreements, contracts, statutory and regulatory provisions as set forth herein Section IV.

COUNT III

Plaintiff, JONES realleges Sections I through XII and Count I through II as if they were fully restated as part of this Count and alleges:

1. That although plaintiff JONES submitted four (4) competetive low bids on four (4) separate cut and cover contracts and requested mandated assistance on behalf of his non-union "MBE" firm in accordance to the "ACTS", agreements, contracts, statutory and regulatory provisions as set forth herein Section IV.

2. Nonetheless and in furtherance of the conspiracy, the defendant NFTA's officers and administrators, while acting under color and in concert with the other individual White defendants and in breach of their ageements, did, arbitrarily, capriciously, intentionally and purposely, with malice, awarded each and every contract low bidded by plaintiff JONES, to White owned unionized contracting firms in accordance to their unionized status and higher overhead and other cost bid factors; all in violation of the "ACTS", agreements, contracts, statutory and regulatory provisions as set forth herein in Section IV, for purposes of depriving plaintiff JONES of the benefits of his and his non-union "MBE" firm's statutory entitlements because of his race and because of his "MBE" firm's general contracting non-union status, and to provide for White

persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded Buffalo Subway Construction Project.

COUNT IV

Plaintiff JONES realleges Sections I through XII and Counts I through III, as if they were fully restated as part of this Count and alleges:

1. That plaintiff JONES further submitted, on behalf of his non-union "MBE" firm, a construction manager's contract proposal to defendant NFTA's officers and administrators in order to participate on the project in accordance to defendant NFTA's "MBE" program agreement and in accordance to the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV, after being rejected on the low bids.

2. Nonetheless, and in furtherance of the conspiracy, the defendant NFTA's officers and administrators, while acting under color and in concert with the other individual defendants and in breach of the aforementioned agreements, contracts, statutory and regulatory provisions as set forth herein Section IV, did, arbitrarily, capriciously, intentionally and purposely, with malice, ignore and disregard plaintiff JONES' construction manager's proposal, all in violation of the "ACTS", agreements, contracts, statutory and regulatory provisions as set forth herein Section IV, for the unlawful purpose of depriving plaintiff JONES of the benefits of his and his non-union "MBE" firm's statutory entitlements, because of his race and because of his "MBE" firm's general contracting non-union status, to unlawfully provide for White persons to obtain the

benefits that were earmarked for the benefit of minority persons on the federally funded Buffalo Subway Construction Project.

COUNT V

Plaintiff JONES realleges Section I through XII and Count I through IV as if they were fully restated as part of this Count and alleges:

1. That in addition, plaintiff JONES, in order to participate on the project, prepared and submitted eight (8) additional written contract proposals totaling $39,015,464.00 on behalf of his non-union "MBE" firm to the attention of the White defendants' officers and administrators, whose firms were awarded prime (general) contracts on the federally funded project.

2. Nonetheless, and in furtherance of the conspiracy, the White

defendants, contracts firms, officers and administrators named herein Section X, while acting under color, and in concert with the other defendants and in breach of the aforementioned agreements, did arbitrarily, capriciously, intentionally and purposely, with malice, reject and/or ignore plaintiff JONES' contract proposals, all in violation of the "ACTS", agreements, contracts, statutory and regulatory provisions as set forth herein Section IV, for the purpose of depriving plaintiff JONES of the benefits of his and his "MBE" firm's statutory entitlements because of his race and because of his "MBE" firm's general contracting non-union status, to unlawfully provide for White persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded project.

COUNT VI

Plaintiff, JONES realleges Section I through XII and Count I through V as if

they were fully restated as part of this Count and alleges:

1. That the defendants' individual White officers and representatives of the defendants, coalition, associations, unions and counsel named herein Section XI as the dominating and controlling policy-making individuals on the project, while acting under color and in concert with the other defendants in accordance to their unconstitutional, monopolistic, discriminatory lock-out agreement as set forth in paragraphs 4 through 8 heren Section V, did enforce and cause plaintiff JONES' non-union "MBE" firm to be excluded from participating on the project for the purpose of depriving plaintiff JONES of his statutory entitlements because of his race and because of his "MBE" firm's general contracting non-union status and to unlawfully provide

for White persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded project.

COUNT VII

Plaintiff JONES realleges Section I through XII and Count I through VI as if they were fully restated as part of this Count and alleges:

1. That the defendants' minority "fronts" individual persons named herein Section XII participated in the conspiracy as imposters and "fronts" by the methods of executing fraudulent non-beneficial contracts/agreements for the receipt of small cash payments and or salaries without profits and other benefits, for the unalwful purpose of deceiving the public and depriving plaintiff of the benefits of his and his non-union "MBE" firm's statutory entitlements because of his race, and

because of his "MBE" firm's general contracting non-union status and to unlawfully provide for White persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded project.

COUNT VIII

Plaintiff JONES realleges Sections I through XII and Count I through VII as if they were fully restated as part of this Count and alleges:

1. That plaintiff JONES made numerous written complaints to defendant UMTA's individual officers and administrators named herein in Section VII complaining of the conspiracy, exclusionary and discriminatory actions by the defendants pertaining to their ignoring, excluding and rejecting his "MBE" firm's low bids, request

for assistance and contract proposals. Plaintiff JONES requested that defendant UMTA's officers and administrators enforce assistance in accordance to the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV.

2. Nonetheless, and in furtherance of the conspiracy, the defendant UMTA's officers and administrators, while acting under color and in concert with the other individual defendants and in beach of their agreements, did, arbitrarily, capriciously, intentionally and purposely, with malice, declined to intercede and provide requested mandated enforcement assistances, all in violation of the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV, for the unlawful purpose of depriving plaitniff JONES of the benefits of his and his non-union "MBE" firm's statutory

entitlements because of his race and because of his "MBE" firm's general contracting non-union status and to unlawfully provide for White persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded project.

COUNT IX

Plaintiff JONES realleges Section I through XII and Counts I through VIII as if they were fully restated as part of this Count and alleges:

1. That defendant NYS DOT individual officers and administrators named herein Section IX, as co-sponsors and fiduciaries of the project, were fully aware of the conspiracy, exclusionary and discriminatory acts that were being committed by the defendants against plaintiff JONES'

interest, in violation of the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV.

2. **Nonetheless, and in** furtherance of the conspiracy the defendant NYS DOT's officers and administrators while acting under color and in concert with the other other defendants, did, arbitrarily, capriciously, intentionally, purposely and with malice, decline to intercede and provide the necessary and required monitoring auditing and enforcement procedures to protect plaintiff JONES' staturoty entitlements, all in violation of the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV, for the unlawful purpose of depriving plaintiff JONES of the benefit of his and his non-union "MBE" firm's statu-

tory entitlements because of his race and because of his "MBE" firm's general contracting non-union status and to unlawfully provide for White persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded project.

COUNT X

Plaintiff JONES realleges Section I through XII and Count I through IX, as if they were fully restated as part of this Count and alleges:

1. That the White defendants, individual officers and administrators of the participating White owned contracting firms prepared and submitted false reports to defendant UMTA's administrators pertaining to the dollar amounts that were purportedly "earned" by minority ("front") firms on the federally funded project with

sanctions from the officers and administrators of defendants NFTA, NYS DOT and UMTA in furtherance of the conspiracy and in violation of the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV, for the unlawful purpose of depriving plaintiff JONES of the benefits of his and his non-union "MBE" firm's statutory entitlements because of his race and because of his "MBE" firm's general contracting non-union status and to unlawfully provide for White persons to obtain the benefits that were earmarked for the benefit of minority persons on the federally funded project.

COUNT XI

Plaintiff JONES realleges Sections I through XII and Count I through X as if they were fully restated as part of this Count and alleges:

1. That the individual officers and administrators of defendant NFTA in furtherance of the conspiacy, made false reports to the public through the news media and to the defendant UMTA and NYS DOT pertaining to the dollar amounts that were purportedly "earned" by minority "front" firms on the project while acting in concert with defendants officers, representatives and administrators of defendants UMTA, NYS DOT's contracting firms, unions, associations, coalitions, counsel and minority "front" firms in furtherance of the conspiracy and in violation of the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV, for the unlawful purpose of depriving plaintiff JONES of the benefit of his and his "MBE" firm's statutory entitlements because of his race and for the additional unlawful purposes as alleged.

COUNT XII

Plaintiff JONES realleges Sections I through XII and Count I through XI as if they were fully restated as part of this Count and alleges:

1. That although Congress enacted the Civil Rights Acts of 1866 and 1871, codified at 42 USC Section 1981, which provides in relevant part that "all persons within the jurisdiction of the United States shall have the same rights in every state and territory to make and enforce contracts..." as is enjoyed by white citizens"..."

2. Nonetheless, and in furtherance of the conspiracy, the defendants' individual officers, administrators and representatives of NFTA, NYS DOT, UMTA, White owned contracting firms, unions, associations, coalitions, counsel and minority "front" persons, while

acting in concert and under color, purposely, with malice, discegarded plaintiff JONES' statutory and constitutional rights and deprivded him of the benefits of his and his "MBE" firm's statutory entitlements because of his race and for the additional unlawful purposes as alleged.

COUNT XIII

Plaintiff Jones reallegs Sections I through XII and Count I through XII as if they were fully restated as part of this Count and alleges:

1. That although the United States Thirteenth Constitutional Amendement provides for the abolishment of slavery and involuntary servitude so as to grant Blacks their property rights and other rights as is enjoyed by White citizens.

Nonetheless, and in furthernace of the conspiracy, the defendants, individuals, officers, administrators, and representatives of defendants, NFTA, NYS DOT, UMTA, White owned contracting firms, unions, associations, coalitions, counsel and minority "fronts" persons, while acting in concert and under color, arbitrarily, capriciously, intentionally and purposely, with malice, disregarded plaintiff JONES' statutory and constitutional rights and deprived him of his statutory entitlements because of his race and for the additional unlawful purposes as alleged.

COUNT XIV

Plaintiff JONES realleges Sections I through XII and Count I through XIII as if they were fully restated as part of this Count and alleges:

1. That although the United States Fourteenth Constitutional Amendment provides in relevant part that:

> **"no state shall make or enforce any laws which shall abridge the privileges of ...citizens of the United States",..."nor deny any person within its jurisdiction the equal protection of the laws".**

2. Nonetheless, and in furtherance of the conspiracy, the individual defendants and each of them, while acting under color and in concert with each other, did, arbitrarily, capriciously, intentionally, purposely and with malice, carelessly disregarded and ignored plaintiff JONES' constitutional rights, and deprived him of the benefits of his and his non-union "MBE" firm's statutory entitlements because of his race and for the additional purposes as alleged.

COUNT XV

Plaintiff JONES realleges Section I through XII and Count I through XIV as if they were fully restated as part of this Count and alleges:

1. That plaintiff JONES is a beneficiary of the "ACTS" and performed all the requirements to obtain mandated assistance and contracts on the federally funded project in accordance with the "ACTS", agreements, contracts, statutory and regulatory provisions under the "ACTS" as set forth herein Section IV.

2. Nonetheless, and in furtherance of the conspiracy, the individual defendants and each of them while acting under color and in concert with each other, did, arbitrarily, capriciously, intentionally, purposely and with malice, carelessly disregarded and ignored plaintiff JONES' statutory and constitutional rights and deprived him of the benefits of his and his non-union "MBE" firm's statutory entitlements because of his race,for the additional

unlawful purposes as alleged, which was neither privileged, nor sanctioned by law, causing plaintiff JONES to suffer substantial economical and financial losses and to suffer individual embarrassment, humiliation, severe and extreme emotional distress and mental anguish, all to his detriment and individual damages.

COUNT XVI

That as a result of the foregoing intentional, careless and malicious acts by the defendants and each of them acting in concert and against plaintiff JONES, plaintiff suffered from the following individual injuries:

(a) Loss of acquiring additional individual heavy construction experiences;

(b) Loss of his individual civil and constitutional rights to have participated on the federally funded Buffalo Construction Project, as owner and day-to-day administrator of his non-union

"MBE" construction firm;

(c) Loss of individual salaries for a minimal period of over five (5) years, that would have been obtained in the administration and overseeing of his non-union "MBE" firm's contracts on the project;

(d) Loss of the benefits of his non-union "MBE" firm not having participated on the federally funded project as a non-union "MBE" prime contractor;

(e) Loss of the benefits of his "MBE" firm not having acquired and retained the heavy construction material inventories on the contracts low bid by plaintiff JONES on the project;

(f) Loss of the benefits of his non-union "MBE" firm's not having acquired and retained heavy construction equipment that was part of the cost to perform the contracts low bid by plaintiff JONES on the project;

(g) Loss of the benefits of his non-union "MBE" firm not having acquired and retained miscellaneous construction equipment that was part of the cost to perform the contracts low bid by plaintiff JONES on the project;

(h) Loss of the benefits of not receiving engineering and other mandated technical assistance on the contracts low bid by plaintiff JONES on the project;

(i) Loss of the benefits of a financial enhanced non-union "MBE" profitable corporate firm;

(j) Loss of benefit of individual dividends;

(k) Loss of benefit of individual achievements and enjoyment from participating on the project;

(1) Loss of benefits of an individual's improved social and economical status.

Plaintiff JONES has been slandered and suffered individual embarrassment, humiliation, severe and extreme emotional distress and mental anguish, all to his detriment and individual damages in the total sum of $17,500,000.00, by virtue whereof plaintiff JONES is entitled to be redressed and to recover compensatory damages in the sum of $17,500,000.00, plus accumulated interest thereon.

COUNT XVII

1. That at all material times, and doing the times alleged herein, defendants, and each of them, knew that plaintiff JONES was "Black" and a member of the protected class under Title VI, and further knew that plaintiff JONES and his non-union "MBE" firm was socially and economically disadvantaged due to their

financial and social status and total inability to obtain financing and bonding, and was relying upon defendant NFTA's officers and administrators and upon defendant contractors, White officers and administrators for assistance in the obtaining of bonding and financing and contracts on the federally funded Buffalo Subway Construction Project, as mandated, under the "ACTS", contracts, agreements, statutory and regulatory provisions as set forth herein Section IV.

2. Nonetheless, defendant NFTA's officers and administrators, unionized contractors, White officials and administrators, and each of them, while acting in concert with all other defendants, did, under color and in breach of their fiduciary agreements, wantonly, fraudulently, oppressively, maliciously, intentionally, pur-

posely, arbitrarily and capriciously, through an unlawful conspiracy, discriminated against and deprived plaintiff JONES of the benefit of his and his "MBE' firm's statutory entitlements to participate on the federally funded Buffalo Subway Construction Project, in furtherance of their unlawful scheme and conspiracy that allowed White persons and their firms to obtain the experiences, salaries, equities, dividends, profits and other benefits earmarked for the benefit of minority persons through their valid "MBE" firms on the federally funded Buffalo Subway Construction Project, by virtue whereof plaintiff JONES is entitled to recover punitive damages in the sum of $50,000,000.00 (fifty million) dollars.

WHEREFORE, plaintiff JONES prays for judgment in compensatory damages against the defendants, and all of them, in the amount of $17,500,000.00, plus accumulated

interest thereon, together with judgement for punitive damages against the individual defendants, and all of them, in the amount of $50,000,000.00, and the recovery of reasonable attorney fees, together with the costs and disbursements of this action and for an Order designating this action a Class Action, establishing a time period for other affected individuals of Plaintiff Jones' class to join this action through their counsel and/or pro se, to proceed jointly with Plaintiff Jones' pro se, to the merits.

And for such other and further relief as this Court deems just, equitable and proper.

DATED: Buffalo, New York
September 6, 1988

WALTER L. JONES, Pro se
167 Roebling Avenue
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